

**Report No. 6.8                      State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes) (SEPP 70)****Directorate:** Sustainable Environment and Economy**Report Author:** Shannon Burt, Director Sustainable Environment and Economy**File No:** I2019/446**Summary:**

In February 2019, SEPP 70 was further expanded to include all councils across NSW. The purpose of this report is to update Council on next steps now that Byron Shire has been entered into SEPP 70 to investigate and develop an affordable housing contributions scheme under the SEPP.

<https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Diverse-and-affordable-housing/SEPP-70-Affordable-Housing-Revised-Schemes>

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**RECOMMENDATION:**

1. That Council advise the Department of Planning that it is preparing an affordable housing contribution scheme under State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes).
2. That Council fund the expedited preparation of an affordable housing contribution scheme and its associated local environmental plan amendment and planning agreement policy for Byron Shire through an allocation of \$20,000 at the March Budget Quarterly review.
3. That subject to 2, Council prepare an affordable housing contribution scheme and its associated local environmental plan amendment which is consistent with the Department of Planning guideline.
4. That subject to 2, Council prepare a planning agreement policy for affordable housing which is consistent with the Environmental Planning and Assessment (Planning Agreements) Direction 2019.

**REPORT**

One of the objectives of the Environmental Planning and Assessment Act 1979 (the Act) is to promote the delivery and maintenance of affordable housing.

The Act enables councils to levy contributions for affordable housing. To do this, the Act requires a council's local government area (LGA) to be named in a state environmental planning policy. [State Environmental Planning Policy No. 70 – Affordable Housing \(Revised Schemes\)](#) (SEPP 70) identifies these LGAs.

Once an LGA is named in SEPP 70, a council can seek to amend its local environmental plan (LEP) to have reference to an affordable rental housing contribution scheme and to levy affordable housing contributions.

In February 2019, SEPP 70 was further expanded to include all councils across NSW. The amendment removes the administrative step of entering a LGA into SEPP 70, thereby expediting councils' ability to investigate and develop an affordable housing contributions scheme. It does so by entering all LGAs into SEPP 70 (thus meeting the Act's requirements of a council being named in a SEPP).

The next step in the process is for Council to prepare affordable housing contribution scheme and amend the local environmental plan to reference the scheme.

***What can an 'affordable housing' scheme do?***

An 'affordable housing' scheme allows development consent conditions to be imposed requiring, either:

- the dedication of part of the development site (or other land of the applicant) free of cost to be used for the purpose of providing 'affordable housing'; or
- the payment of a monetary contribution to be used for the purpose of providing 'affordable housing';
- or both.

***What is 'affordable housing' under SEPP 70?***

SEPP 70 is founded on the principle that the housing is only 'affordable housing' if it meets the following definitions:

*affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument (as per section 1.4(1) of the Act).*

***Definition of 'affordable housing' households:***

*For the purposes of the definition of affordable housing in section 1.4 (1) of the Act, very low income households, low income households and moderate income households are those whose gross incomes fall within the following ranges of percentages of the median household income, for the time being for the Greater Sydney (Greater Capital City Statistical Area) or the Rest of NSW (Greater Capital City Statistical Area) according to the Australian Bureau of Statistics:*

*Very low income household less than 50%*

*Low income household 50 or more but less than 80%*

*Moderate income household 80–120%*

It should be noted that schemes under SEPP 70 generally only look to provide rental housing (rather than owner-occupied housing). Additionally, there is generally a requirement that that housing be institutional (in the sense that it must be managed by registered housing organisations, rather than traditional ‘mum and dad’ and property investors). Further, buildings provided for affordable housing are to be managed so as to maintain their continued use for affordable housing (in perpetuity).

***How to prepare an affordable housing contribution scheme***

Councils must:

1. Investigate the affordable housing need in their LGAs;
2. Identify the areas to which an affordable housing contribution scheme will apply;
3. Determine a viable affordable housing contribution rate;
4. Prepare affordable housing contribution schemes; and
5. Amend their LEPs through the planning proposal process to reference their affordable housing contribution schemes.

After which, councils can then apply consent conditions that require contributions for affordable housing.

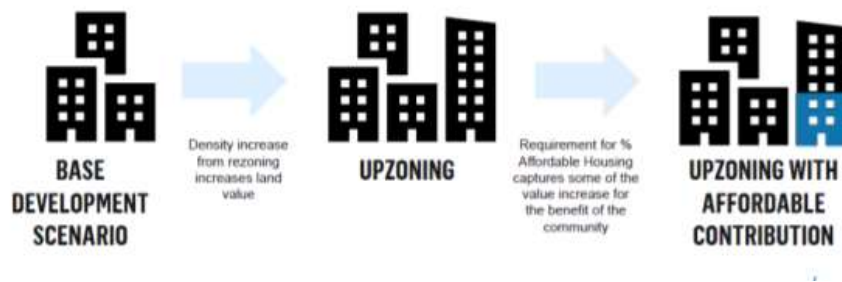
An example of how a new scheme might work is set out in the Inner West Council’s Affordable Housing Policy dated November 2016. The policy provides for a 15 per cent ‘Affordable Housing Contribution’ within new greenfield, brownfield and greyfield sites, and major private and public redevelopments. The policy is directed at developments that meet a threshold of 20 units or 1,700 square metres in gross floor area.

It is important to understand that the proposed ‘15 per cent’ is not a proportion of development profits. It is 15 per cent of gross floor area of the development. So essentially, what is taxed under such a scheme is the gross revenue of the development, rather than the net revenue (as might occur in more conventional taxation schemes).

An important consideration for the contribution scheme is how and when it can be applied. Under Section 7.32(3)(b) of the Act, any condition imposed on a development consent for affordable housing must be authorised by an LEP and must be in accordance with an affordable housing contribution scheme for dedications or contributions set out in, or adopted by, the LEP.

With this in mind it is critical that Council expedite the preparation of a contributions scheme and LEP amendment prior to the completion of any current and anticipated major greenfield / brownfield land rezoning to ensure that a contribution for ‘affordable housing’ can be collected from the development of land identified in the scheme that is being upzoned.

Of note, the rate of contribution can be determined either by a percentage of floor space that can equate to a completed affordable rental unit, or a monetary contribution, or any combination of the above. This provides flexibility to Council to determine when it is appropriate and efficient to receive completed dwellings and when it would be appropriate to receive monetary contributions.



### ***Voluntary Planning Agreements for Affordable Housing***

5 Further to SEPP 70.

The Act enables a council to enter into a Voluntary Planning Agreement with a developer for provision of or monetary contribution for affordable housing.

- 10 The Minister has issued an Environmental Planning and Assessment (Planning Agreements) Direction 2019 to clarify this. The Direction requires councils to consider a series of matters when negotiating a planning agreement with a developer for the purposes of affordable housing in connection with a development application.
- 15 Councils that want to negotiate a planning agreement for the provision of affordable housing, after considered the requirements of the Ministerial Direction, will need to prepare and publish a policy that sets out the circumstances in which it may seek out a planning agreement. This policy will need to be made publicly available.
- 20 It is recommended that Council prepare a policy in concert with the contributions scheme.

## **STRATEGIC CONSIDERATIONS**

### ***Community Strategic Plan and Operational Plan***

| CSP Objective   | L2  | CSP Strategy  | L3    | DP Action  | L4      | OP Activity  |
|---|-----|---|-------|--|---------|--|
| <b>Community Objective 4: We manage growth and change responsibly</b> | 4.2 | Support housing diversity in appropriate locations across the Shire | 4.2.1 | Establish planning mechanisms to support housing that meets the needs of our community | 4.2.1.1 | Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock |

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### ***Legal/Statutory/Policy Considerations***

- 30 In February 2019, SEPP 70 was further expanded to include all councils across NSW. The amendment removes the administrative step of entering a LGA into SEPP 70, thereby expediting councils' ability to investigate and develop an affordable housing contributions scheme. It does so by entering all LGAs into SEPP 70 (thus meeting the Act's requirements of a council being named in a SEPP).

### ***Financial Considerations***

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An allocation of \$20,000 for the expedited preparation of an affordable housing contribution scheme and its associated local environmental plan amendment and planning agreement policy will be considered as part of the March Budget Quarterly review deliberations.

**Report No. 13.20**      **Residential Strategy and affiliated projects update**  
**Directorate:**        Sustainable Environment and Economy  
**Report Author:**     Natalie Hancock, Senior Planner  
**File No:**                I2019/1903

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**Summary:**

10    The purpose of this report is to provide Council with an update on the status of the draft Residential Strategy and a number of affiliated projects, namely:



- Lot 12 Bayshore Drive
- Old Mullumbimby Hospital
- 15    • Low Rise Medium Density Code planning proposal
- SEPP 70 Affordable Housing Contribution Scheme.

20    The report also report seeks Council support for consideration of all Residential Strategy new release investigation lands for inclusion under the SEPP 70 Affordable housing contribution scheme.

**RECOMMENDATION:**

1.    **That Council note that the findings of the urban design investigation for Lot 12 Bayshore Drive will be reported to Council in early 2020 with the intent to exhibit it concurrently with the draft Byron Arts and Industry Estate Precinct Plan.**
2.    **That Council note that the old Mullumbimby Hospital Site was considered in the draft Alternative Housing Models Research Paper (Attachment 1 E2019/87788) with testing of the concepts against housing governance and delivery models to occur over the next two months, enabling the findings to be reported to Council in early 2020.**
3.    **That Council note that the planning proposal to introduce minimum lot size standards for ‘manor house’ and ‘multi dwelling housing’ in readiness for the pending Low Rise Medium Density Code commencement in July 2020, finalised public exhibition on 22 November and the submissions will be reported to Council for consideration in early 2020.**
4.    **That Council support consideration of Residential Strategy new release investigation lands for inclusion under the SEPP 70 Affordable housing contribution scheme.**
5.    **That Council note that staff are reviewing the public submissions received on the draft Residential Strategy and the submissions will be reported to Council for consideration in early 2020.**

**Attachments:**

- 25    1    Byron Bay Alternative Housing Model, E2019/87788 
- 2    Special Disclosure of Pecuniary Interest Annexure, E2012/2815 

**REPORT**

The purpose of this report is to update Council on the following key projects:

- 5     • Lot 12 Bayshore Drive
- Old Mullumbimby Hospital
- Low Rise Medium Density Code planning proposal
- Draft Residential Strategy.

10    The report is set out in the above order.

**Lot 12 Bayshore Drive**

15    Lot 12 on DP 1189646, highlighted in yellow on the figure below, is situated off Bayshore Drive in northern part of the Byron Arts and Industry Estate (BAIE). It is a key Council-owned land parcel, likely to become available for development in the next couple of years.



Figure 1: Lot 12

20    Leading on from an Enquiry by Design workshop for BAIE Council staff, working with a group of representative stakeholders from within the BAIE, have prepared a draft Byron Arts and Industry Estate Precinct Plan (Precinct Plan). The draft Precinct Plan was considered at the 19 September 2019 Council Planning Meeting where Council resolved (**Res. 19-452**) to endorse the Draft Precinct Plan for public exhibition. The Enquiry by Design and draft Precinct Plan identified Lot 12 as an opportunity for the development of a *sustainability and innovation hub*. Also at the 19 September meeting Council resolved (**19-452**) to accelerate the preparation of a Structure Plan for Lot 12 concurrent with the finalisation of the Draft Precinct Plan.

30    A request for quotation has been issued for a consultant to prepare urban design site options. The brief issued requested that 3 options be explored in the context of the land functioning as a sustainability and innovation hub by either:

- 35    • refining the broad concept in the draft Precinct Plan
- adding into the land use mix a TAFE and a Vanguard laundry (a not-for-profit organisation laundry with a social outcome purpose such as supporting people who have a lived experience of mental illness and struggle to secure employment)
- a blank canvas - open to ideas.

40    The findings of the urban design investigation for Lot 12 Bayshore Dr will be reported to Council in early 2020 with the intent to exhibit it concurrently with the draft Byron Arts and Industry Estate Precinct Plan.

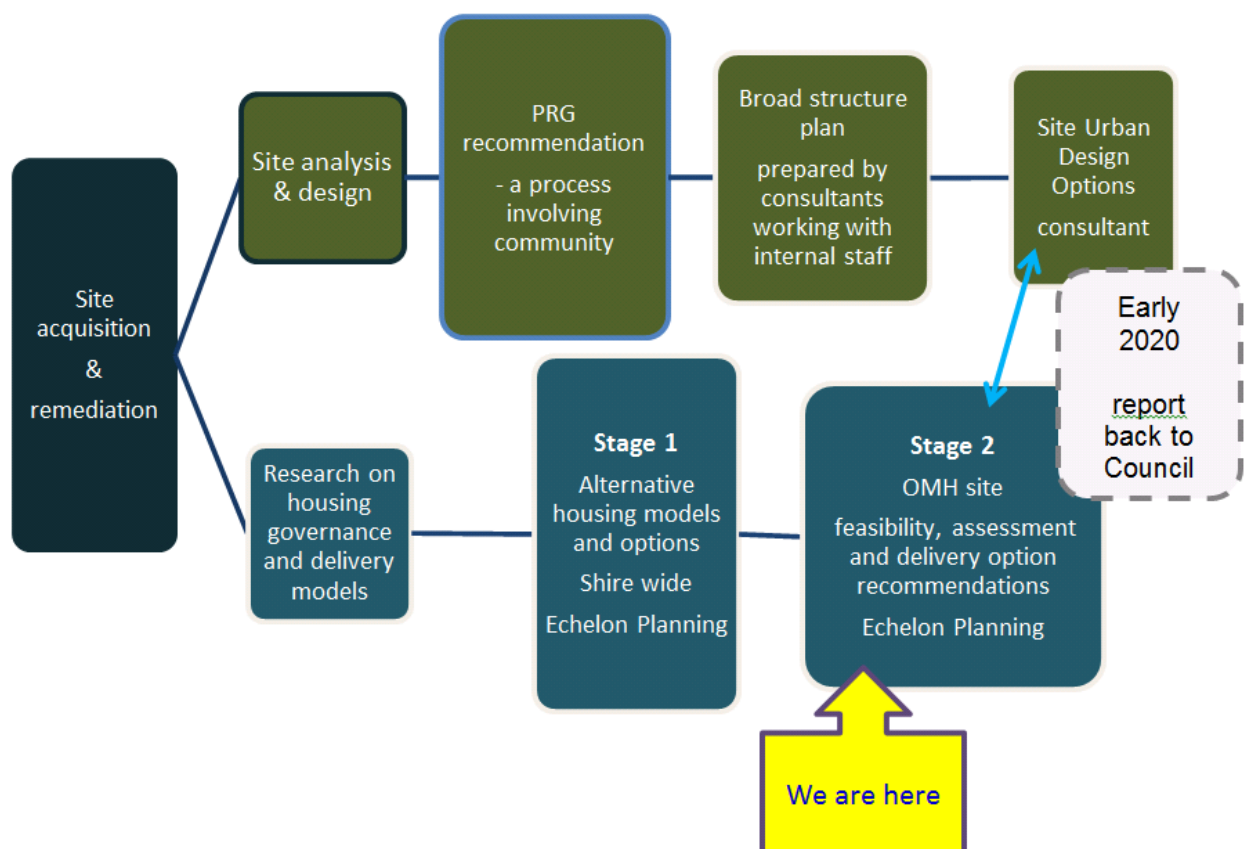
Also refer to the separate report in this meetings agenda titled 'TAFE NSW and Lot 12 Bayshore Drive Byron Bay'.

### Old Mullumbimby Hospital

Facilitating redevelopment for the old Mullumbimby Hospital has involved two lines of investigation, site analysis and design and research on housing governance and delivery models as shown on Figure 2. Site analysis investigations have progressed to a broad structure plan reflecting the findings of the Mullumbimby Hospital Site Project Reference Group. The plan, prepared by consultants in association with internal staff, includes residential opportunities for live work spaces, intentional community and affordable, accessible and appropriate housing for older people and for households with a range of income levels.

A draft Alternative Housing Models Research Paper has been prepared by Echelon Planning and is attached for Council's information (Attachment 1).

The next step is to formulate site urban design concepts to be tested against housing governance and delivery models. This will occur over the next two months, enabling the findings to be reported to Council in early 2020.



PRG: Mullumbimby Hospital Site Project Reference Group

**Figure 2: Outline of process for old Mullumbimby Hospital (OMH)**



**Low Rise Medium Density Code planning proposal**

In actioning **Res 19-266** a planning proposal has been prepared to introduce a minimum lot size standards for 'manor house' (a residential flat building with 3 or 4 dwellings) and 'multi dwelling housing (terraces)'. The lot sizes proposed are:

- 1000m<sup>2</sup> - R2 Zone Low Density Residential
- 800m<sup>2</sup> - R3 Zone Medium Density Residential.

The purpose of the planning proposal is to set minimum lot size provisions for manor houses and terraces that are consistent with Council's current low rise medium density controls for the R2 and R3 residential zones in readiness for the pending Low Rise Medium Density Code commencement in July 2020.

The planning proposal was granted a gateway by the Department of Planning, Industry and Environment and has been exhibited for comment from 23 October – 22 November 2019. At the time of preparing this report 4 submissions on the planning proposal had been received, noting that the exhibition has just closed.

The planning proposal and submission summary will be reported to Council for consideration in early 2020. This will assist with progression of preparation of Development Control Plan Character Design Guidelines for Low Rise Medium Density Housing Code.

***SEPP 70 Affordable Housing***

In actioning **Res 19-152** a planning proposal is under preparation for an affordable housing contribution scheme under *State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes)*. Figure 3 following, outlines the process.

Contribution schemes apply to developments that are facilitated by up-zoning. As part of the preparation of the scheme it is necessary to identify areas for future rezoning. The draft Byron Shire Residential Strategy identifies new release residential areas with potential for future rezoning. A single contribution scheme may apply to multiple areas within a local government area, as long as the feasibility analysis supporting each area specifically addresses each one.

This report seeks Council support for consideration of all new release investigation lands identified in the Residential Strategy for inclusion under *SEPP 70*.



**Report No. 13.4      PLANNING - Byron Shire Affordable Housing Contribution Scheme and Planning Agreements Policy and Procedure**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Natalie Hancock, Senior Planner

**File No:** I2020/402

**Summary:**

The draft Byron Shire Residential Strategy sets out a land-use vision that includes addressing housing affordability.

Council on 11 April 2019, in response to a report on State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes) (SEPP 70) resolved amongst other items, **Res19-152:** to prepare planning agreement policy for Byron Shire .The purpose of this report is to provide Council with a draft Byron Shire Affordable Housing Contribution Policy (Attachment 1) and supporting Procedures (Attachment 2) setting a framework to advocate for, facilitate, provide and manage affordable housing contributions in Byron Shire.

Analysis supporting the draft Residential Strategy identified limited opportunities for the market to meet the demand for affordable housing in Byron LGA and significant underlying demand for affordable housing. The analysis concluded that there is a gap between the current needs and supply of rental accommodation for very low, low, and moderate income households and so the collecting of affordable housing contributions by Council, where the development remains viable, is warranted.




The purpose of this report is to seek Council support to publicly exhibit draft Byron Shire Affordable Housing Contribution Policy setting a framework to advocate for, facilitate, provide and manage affordable housing contributions in Byron Shire acquired through a planning agreement or delivered through an affordable housing contribution scheme.

In addition, this report provides an update on the status of the establishment of a SEPP 70 Affordable Housing Contribution Scheme for Bryon Shire.

**RECOMMENDATION:**

- 1. That Council adopt the Draft Byron Shire Affordable Housing Contribution Policy in Attachment 1 (E2020/33355) and accompanying Procedures Attachment 2 (E2020/33359) and place the documents on public exhibition for minimum a period of 28 days.**
- 2. That following exhibition, Council receive a further report detailing submissions made. Should there be no submissions as of the close of the exhibition period, that Council adopt the Draft Byron Shire Affordable Housing Contribution Policy in Attachment 1 (E2020/33355) and accompanying Procedures Attachment 2 (E2020/33359).**

**Attachments:**

- 1 Attachment 1 Draft Byron Shire Affordable Housing Contribution Policy, E2020/33355 
- 2 Attachment 2 Procedures to accompany draft Byron Shire Affordable Housing Contribution Policy, E2020/33359 
- 3 Special Disclosure of Pecuniary Interest Annexure, E2012/2815 

**REPORT**

The draft Byron Shire Residential Strategy sets out a land-use vision that includes housing affordability.

Council on 11 April 2019, in response to a report on State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes) (SEPP 70) resolved amongst other items, (**Res19-152**) to prepare planning agreement policy for Byron Shire. The purpose of this report is to provide Council with a draft Byron Shire Affordable Housing Contribution Policy (Attachment 1) and supporting Procedures (Attachment 2) setting a framework to advocate for, facilitate, provide and manage affordable housing contributions in Byron Shire.

Analysis supporting the draft Residential Strategy identified limited opportunities for the market to meet the demand for affordable housing in Byron Shire and significant underlying demand for affordable housing. The analysis concluded that there is a gap between the current needs and supply of rental accommodation for very low, low, and moderate income households and so the collecting of affordable housing contributions by Council, where the development remains viable, is warranted.

The purpose of this report is to seek Council support to publicly exhibit a draft Byron Shire Affordable Housing Contribution Policy and Procedures setting a framework to advocate for, facilitate, provide and manage affordable housing contribution in Byron Shire.

While this Policy is not legally binding, it is intended that the Council and all persons dealing with Council in relation to affordable housing contributions will follow this policy to the fullest extent possible. The Procedures for Affordable Housing Contributions is intended to assist with implementation of the policy and to allow for more responsive approaches, including shorter review cycles and realistic resource allocations.

**Key aspects*****Why is the policy warranted?***

One of the objectives of *the Environmental Planning and Assessment Act 1979 (the Act)* is to promote the delivery and maintenance of affordable housing. To do this *the Act* incorporates a number of enabling mechanisms.

In the case of Byron Shire, Council has or is in the process of activating the following mechanisms:

- Local Environmental Plan 2014 Additional local provisions Clause 6.7 Affordable housing in residential and business zones to enable imposing conditions relating to providing, maintaining or retaining affordable housing - currently operational.
- Planning Agreements with negotiated terms for affordable housing contributions as part of the early implementation affordable housing project.
- SEPP 70 Affordable Housing Contribution Scheme (AHCS) for lands that undergo an upzoning.

*Upzoning* means a change of zone to enable residential development or a change of planning controls (such as floor space ratio) which enables greater residential density on a site.

Regulations, S119 Directions and the [Guidelines for Development Affordable Housing Contribution Schemes \(NSW Govt. Feb 2019\)](#) all help to inform the terms under which contributions for affordable housing can be accepted/required. [Environmental Planning and Assessment \(Planning](#)

[Agreement\) Direction 2019](#) requires Council to prepare and publish a policy that sets out the circumstances in which it may negotiate a Planning Agreement for affordable housing contributions.

- 5 An Affordable Housing Contribution Policy (Policy) provides a local context by setting out how Council intends to operate the contribution framework in Byron Shire for housing acquired through a planning agreement or delivered through an affordable housing contribution scheme.

***Who will be informed by this policy?***

10 While this Policy is not legally binding, it is intended that the Council and all persons dealing with Council in relation to affordable housing contributions will follow this Policy to the fullest extent possible. The Policy (Attachment 1) identifies guiding objectives. The objectives are to:

- 15 i. ensure that the Council's affordable housing contributions framework is efficient, fair, transparent and accountable.
- ii. encourage and adopt innovative and flexible approaches to the provision of affordable housing in a manner that is consistent with Byron Shire Council's strategic and infrastructure plans and as so enabled under *the Act*.
- 20 iii. give local communities greater clarity about affordable housing contribution schemes in Byron Shire by Council.
- 25 iv. give local communities greater clarity about affordable rental housing planned in their local area.
- v. establish a framework governing the use of Planning Agreements by Council for affordable housing contributions.
- 30 vi. identify the circumstances in which Council will and those where Council will not consider entering a Planning Agreement and the contribution form that is acceptable to Council.
- 35 vii. supplement, but not replace or be in lieu of, the application to development of Byron Shire Developer Contributions Plan established under *the Act*.
- viii. give stakeholders greater involvement in determining the type, standard and location of affordable housing and other public benefits.
- 40 ix. allow the community, through the community participation process under the Act, to agree to the redistribution of the costs and benefits of development in order to realise the community preferences for the provision of affordable housing.

***What is the intent of the policy?***

45 The draft Policy contains statements of intent setting out Council's policy position for facilitating, considering and accepting affordable housing contributions. The draft Policy includes amongst the statements of intent, a number of which have previously not been made clear by Council to developers and the community. These particular 'intents', are drawn from draft Residential Strategy and the ongoing SEPP 70 Affordable Housing Contribution Scheme analysis state Council:

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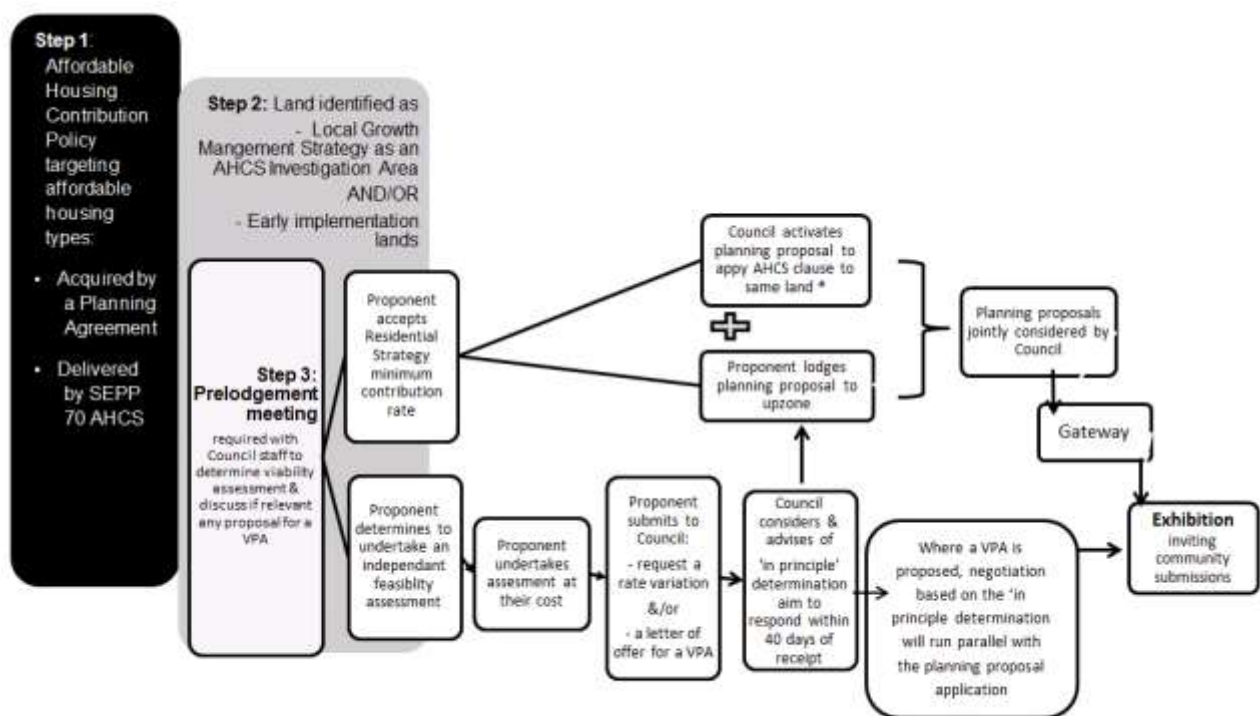
1. Supports a target of about of 60 -70 rental units for very low to moderate income households via development affordable housing contribution schemes in the urban areas over the next 15 to 20 years.

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2. Favours affordable housing contributions that improve the supply of smaller dwellings (1- 2 bedroom) such as self contained units in retirement villages, residential flat buildings and multi-dwelling housing suited to smaller households.
- 5 3. Seeks the concurrent application of a SEPP 70 Affordable Housing Contribution Scheme clause over land subject to an upzoning.
4. In all cases, will determine the affordable housing contribution form, in order to:
  - a) Support a more even distribution of affordable housing within urban areas
  - 10 b) Improve housing choice, diversity and equity
  - c) Promote affordable housing principles.
- 15 5. Supports, where appropriate, use of Local Environmental Plan (LEP) maps to help illustrate what is the preferred affordable housing contribution form for certain land.
6. Supports engaging with developers on Planning Agreements for the provision of affordable housing however, acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council.
- 20 7. Respects in setting contribution rates, the NSW government policy position of a need for a developer's ability to achieve an investment return in order to maintaining a sustainable development market and continued housing supply.
- 25 8. Guides the Residential Strategy to set a minimum affordable housing contribution rate for areas based on Council's understanding of development feasibility.

***How does the policy and procedures guide the contribution making process?***

To assist Council, developers and the community understand the contribution process the policy is accompanied by a set of procedures including a flow diagram for upzoning processes. A copy of the diagram is shown below:



# even if the proponent offers a voluntary planning agreement, Council will seek to apply an AHCS clause for the land in LEP 2014

Key points in the contribution process

- 5       • The use of the term *proponent* means the landowner and/or developer making a development application or a request for an LEP instrument change.
- 10       • Even if the proponent offers a voluntary Planning Agreement for affordable housing, Council will seek to apply an AHCS clause for the land in LEP 2014. The basis for this is to cover instances where the Planning Agreement falls over or where further upzonings are sought after the initial upzoning.
- 15       • Even though the Residential Strategy will set a contribution rate, scope will be provided for proponents to as part of a planning proposal for the upzoning and AHCS undertake an independent viability testing for their individual precincts/project.
- 20       • Council may negotiate an alternative contribution rate request by a proponent in connection with any upzoning planning proposal. A report containing the independent viability testing undertaken in line with the Guidelines for Development Affordable Housing Contribution Schemes (NSW Govt. Feb 2019) will need to be undertaken at the proponent's expense and submitted with the request.
- 25       • Before undertaking an independent viability testing a planning proposal pre-lodgement meeting is to be held with Council staff to discuss the upzoning, alternative contribution rate request and set terms for the testing.
- 30       • An offer for a Planning Agreement or a request for a contribution rate variation is to be made in writing to the Council by the developer before lodging a planning proposal application.
- 35       • Council will aim to consider the offer/request within 40 days of receipt and advise of the proponent of the 'in principle determination' to enable the proponent to progress with the lodgement of the planning proposal. This 'in principle' determination will provide the basis for the Planning Agreement negotiation and preparation of the AHCS. The Policy includes capacity for Council to delegate this advisory determination process in the interest of efficiency.
- 40       • The acceptance of a request for an alternative contribution rate and/or offer for a Planning Agreement is at the absolute discretion of Council.

45       The pre-lodgement meeting and offer for a Planning Agreement or a request for a contribution rate variation steps will assist Council and the proponent to reach agreement on the key issues and information necessary to justify further consideration of the proposed change to land use or development controls. It will also ensure that a proponent does not commit time and resources undertaking unnecessary studies or preparing information that does not address the main areas of concern with appropriate detail.

45       ***Where are affordable housing contributions anticipated?***

The procedures supporting the Policy set the form under which a contribution may be accepted:

50       In case of AHCS, Council can determine an affordable housing contribution in the following forms:

- 55       a) a percentage of dedicated floor space
- b) land (may be part of the said land, or other land of the applicant)
- c) monetary contribution or
- d) combination of the above

In the case of a Planning Agreement, the Policy limits the contribution form to land only. The land must be fit for residential purpose.

Included in the Policy 'statements of intent' is one that states;

*Council guides the Residential Strategy to set a minimum affordable housing contribution rate for areas based on Council's understanding of development feasibility.*

The procedures provide more detail as to the likely rates and where housing may be delivered:

**Greenfield Investigation Areas**

- Mullumbimby private land greenfield housing contribution areas: 5% of the additional lots or developable areas whichever the greater that is to be used for residential uses
- Mullumbimby Council land greenfield housing contribution areas: 15% of the additional lots or developable areas whichever the greater that is to be used for residential uses.
- Bangalow greenfield housing contribution areas: 5% of the additional lots or developable areas whichever the greater that is to be used for residential uses.
- Belongil greenfield housing contribution area: 5% of the additional lots or developable areas whichever the greater that is to be used for residential uses.

**Infill Investigation Areas**

- Mullumbimby old hospital Council land housing contribution area: 15% of the additional dwellings or total gross floor area that is to be used for residential uses
- Byron Bay Town Centre housing contribution area: 3% of the additional total gross floor area that is to be used for residential uses and 1% of non- residential total gross floor area

The above contribution rates are a work in progress at this time, figures will be further rationalised as part of the implementing of an AHCS. They are considered to be reasonably reflective of what may be expected based on maintaining development viability. The rate is set at a higher level for Council land as it is assumed Council will not be seeking the same return on investment margin as a property developer. The private land feasibility includes a 10 - 15% risk margin, usually expected by financiers.

The Policy continues on to state that... *in the interest of transparency, Table 1: Investigation areas affordable housing yield shows potential affordable dwellings yields for each area when applying the above rates.* The areas listed have been publicly exhibited as an investigation upzoning in forward planning documents and/or a planning proposal.

**Table 1: Investigation areas affordable housing yields**

| Area                         | Potential rental affordable housing yield | Activating referencing document   |
|------------------------------|---|---|
| Mullumbimby non Council land | 17 dwellings                              | Residential Strategy  |
| Mullumbimby Lot 22           | 15 dwellings                              | Residential Strategy  |
| Mullumbimby old hospital     | 10 dwellings                              | Mullumbimby Master Plan   |
| Bangalow                     | 5 dwellings                               | Residential Strategy  |
| Belongil                     | 1 dwelling                                | Residential Strategy  |
| Byron Bay town centre        | 10 dwellings                              | Byron Town Centre Master Plan & 26.2017.6.1 Planning Proposal – FSR removal |

***Will it apply to all development in these areas?***

The Guidelines for AHCS require an affordable housing contribution scheme to clearly state the types of development that are exempt from a contribution levy and why. The Procedures guides exemptions, with sample below:

- community facilities
- residential purposes that will result in the creation of less than 200 square metres of total floor area or
- non-residential purposes that will result in the creation of less than 60 square metres of total floor area or
- refurbishment of non-residential or residential development when no change of use or increase in floor space areas occurs
- child care centres
- schools.

Using the Procedures as overarching guidance on possible exempt developments, as well as the LEP 2014, the AHCS could provide a statutory list of exemptions, most likely in a schedule. As a proposed AHCS is required to be exhibited, the process is open and transparent to the community as to what is exempted from a levy.

***What is intended on receipt of contributions?***

The Procedures indicates that Council will establish an affordable housing delivery program articulating terms guiding contribution collection, responsibilities of a private certifier, contribution administration, administrator selection and accountability.

They also indicate intent of Council to retain ownership of the assets and to select one or more non-profit housing organisations to deliver and manage housing generated under affordable housing contributions.

***How do the Policy, Procedures and SEPP 70 Affordable Housing Contribution Scheme work together?***

The Policy and Procedures provides a framework for housing contributions to be acquired through a planning agreement or delivered through an affordable housing contribution scheme.

As reported to the December 2019 Council meeting, work is progressing on an affordable housing contribution scheme under SEPP 70 for Byron Shire. Since December, feasibility investigations have:

- established a need for affordable housing; and
- determined that a scheme would have a general 'likely viability' on certain proposed new release residential lands in the Shire.

At this stage, Council initiated planning proposals such as Lot 22, Mullumbimby upzoning are anticipated to be the initial land in Byron Shire to which an affordable housing contribution scheme will be applied.

Staff have sought Departmental of Planning, Industry and Environment input on the proposed pathway for introduction of the scheme focusing on:

- i. The ability for Council, concurrent to processing a rezoning request, to seeking an amendment of Byron LEP 2014 so as to applying a SEPP 70 AHCS clause



- ii. The inclusion of 'land' as a contribution form option
  - iii. Use of LEP Maps to depict differing contributions forms within specific identified lots/areas.
- 5 Verbal advice received to-date indicates that this approach, may be acceptable to the Department and that Council could expect a formal response over the coming weeks.

On this basis, the Affordable Housing Contribution Policy has been framed.

**10 *Next steps for the draft Policy***

This Policy although not legally binding is necessary to provide Council and all persons dealing with Council guidance in relation to a AHCS.

- 15 As staff are currently drafting AHCS clauses in LEP 2014 for Council lands and require a policy on Planning Agreements for affordable housing contributions, it recommended that Council adopt for public exhibition the attached draft Byron Shire AHCS and Procedure; and:
- a) should no submissions be received, be determined as adopted from date that public exhibition closes.
  - b) should submissions be received that all submissions be reported back to Council.

Length of time for consultation on the draft Policy

- 25 Council must give public notice of a draft Policy after it is prepared under *Local Government Act 1993 – Section 160 Public notice and exhibition of draft local policy*.

Under *Local Government Act 1993 – Section 160* the period of public exhibition must be not less than 28 days.

30

**STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

| CSP Objective   | CSP Strategy  | DP Action  | OP Activity   |
|---|---|--|---|
| <b>Community Objective 4: We manage growth and change responsibly</b> | 4.2 Support housing diversity in appropriate locations across the Shire | 4.2.1 Establish planning mechanisms to support housing that meets the needs of our community | 4.2.1.4 Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock (Action in Residential Strategy) |
|   | 4.2 Support housing diversity in appropriate locations across the Shire | 4.2.1 Establish planning mechanisms to support housing that meets the needs of our community | 4.2.1.3 Prepare an Affordable Housing contribution scheme under SEPP 70 to be incorporated in the local planning framework controls (Action in Residential Strategy)  |

***North Coast Region Plan 2036***

Direction 25 Deliver more opportunities for affordable housing

- 5 5.1 Deliver more opportunities for affordable housing by incorporating policies and tools into local growth management strategies and local planning controls that will enable a greater variety of housing types and incentivise private investment in affordable housing.

10 ***Byron Shire Draft Local Strategic Planning Statement***

A Liveable Shire

- 15 Local Priority 3: Support housing diversity and affordability with housing growth in the right locations.

***Byron Shire Draft Residential Strategy***

Policy 2: Improved housing choice, diversity and equity

- 20 DIRECTION 2.1: Enable opportunities for innovative new residential forms and models that give a sense of place, promote environmental stewardship and encourage social, economic and cultural diversity and equity.

- 25 DIRECTION 2.2: Facilitate and promote growth in the proportion of rental and to buy housing aimed at the lower end of the market, including those with very low incomes.

***Legal/Statutory/Policy Considerations***

- 30 As discussed in the report.

***Financial Considerations***

- 35 Not applicable to this report.

***Consultation and Engagement***

Consultation and engagement will be provided in a manner consistent with management requirements in dealing with COVID 19.

**Report No. 13.4**      **Review of submissions on the draft Byron Shire Affordable Housing Contribution Policy and Procedure**  
**Directorate:**      Sustainable Environment and Economy  
**Report Author:**      Natalie Hancock, Senior Planner  
**File No:**      I2020/1095

**Summary:**

Council on 21 May 2020 resolved (**Res 20-213**) to adopt for public exhibition a Draft Byron Shire Affordable Housing Contribution Policy and accompanying Procedures.

The Policy provides a framework to facilitate and manage affordable housing contributions. It provides a mechanism to secure land and/or monetary contributions to deliver affordable housing on certain land identified in the draft Residential Strategy and Byron Bay town centre.

The Procedure assists with the implementation of the Policy and provides more detail on how Council intends to operate the contribution framework in Byron Shire.

The draft Policy and Procedures were exhibited for a period of 6 weeks from 3 June – 17 July 2020, with a total of 5 submissions received (Attachment 1), three from community groups, one from a community member and one representing landowners subject to an affordable housing contribution (refer Attachment 1). All submissions were supportive of the Policy and the need to address affordable housing, however expressed concerns with the practical implications of affordable housing delivery.

This report provides a summary of the key matters raised in submissions and recommends no changes to the Byron Shire Affordable Housing Contribution Policy (refer Attachment 2) and accompanying Procedures (refer Attachment 3).

**NOTE TO COUNCILLORS:**





In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

**That Council adopt the Byron Shire Affordable Housing Contribution Policy in Attachment 2 (E2020/55585) and accompanying Procedures in Attachment 3 (E2020/55587).**

**Attachments:**

- 1 Submissions affordable housing contribution policy, E2020/55821 
- 2 Policy Affordable Housing Contribution 2020 - Final version, E2020/55585 
- 3 Procedures to accompany Policy Affordable Housing Contribution, E2020/55587 
- 4 Special Disclosure of Pecuniary Interest Annexure, E2012/2815 

**REPORT**

Council on 21 May 2020 resolved (**Res 20-213**) to adopt for public exhibition a Draft Byron Shire Affordable Housing Contribution Policy and accompanying Procedures.

The draft Policy and Procedures were exhibited for a period of 6 weeks from 3 June – 17 July 2020, with a total of 5 submissions received, three from community groups, one from a community member and one representing landowners subject to an affordable housing contribution (Attachment 1). All submissions were supportive of the policy and need to address affordable housing, however expressed concerns with the practical implications of the delivery of affordable housing.

This report provides a summary of the key matters raised in submissions and recommends no changes to the Byron Shire Affordable Housing Contribution Policy Attachment 2 and accompanying Procedures Attachment 3.

**Key issues**

| Matter Raised  | Staff response  |
|--|---|
| <p><u>Proposed affordable housing contribution area landowner input</u></p> <p>Two landowners of land potentially subject to an Affordable Housing Contribution Scheme responded by agreeing with the Policy and the Objectives, however seeking two changes:</p> <p>1. In regard to Objective <i>vii</i> that states the <i>contributions to supplement, but not replace, or be in lieu of the application to the development of the Byron Shire Developer Contributions Plan established under the Act</i>, that the Policy clearly state that no Developer Contributions, nor Water/Sewer Contributions will be levied on the affordable housing lots/area granted to Council.</p> <p>2. The contribution rates for Mullumbimby and Bangalow are reduced from 20% to 10% on the basis that the provision of 20% of area if that is greater than 20% of lots simply will not work if the end development is a mix of both conventional residential lots, as well as small lots for affordable housing.</p> | <p>1. It is unreasonable to expect that a developer pay developer contributions on a lot that they are required to dedicate to Council for the purposes of affordable housing. Section 7.11 contributions under Byron Shire Developer Contributions Plan 2012 Amendment 4 would not have to be paid for land that is to be subdivided for affordable housing purposes. This policy position already exists in clause 2.15 of the plan. No amendment of the policy as exhibited is required.</p> <p>With respect to the payment of water and sewer charges for subdivisions of land to dedicate a lot to Council for the purposes of affordable housing it is unreasonable to expect the developer to pay these. As this is a separate fund of the creation of the new lot will generate a demand for water and sewer services the contributions should be paid. A mechanism to facilitate the payment would be for the water and sewer contributions to be paid by Council (general fund) from a specific reserve created for this purpose. The reserve would be funded from the affordable housing cash contributions paid by other developers.</p> <p>Section 8 of the Procedures enables review to reflect updates as the residential strategy and subsequent planning proposal/s for investigation areas progress.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p> <p>2. A reduction in the guiding contribution rate of 20 % is not supported nor required. The 20% area would be upper limit for the purposes of the Policy and is subject to further viability testing on a case by case basis.</p> <p>The Policy and Procedures are underpinned by the logic a development needs to be viable, otherwise no housing will be delivered.</p> |

| Matter Raised   | Staff response  |
|---|---|
|   | <p><i>Procedure 4.1 Establishing a contribution rate (item) c)</i> enables proponents as part of a planning proposal for the upzoning to have the <u>ability to request a contribution rate variation for their individual precincts/project and AHCS clause</u>. This procedure can involve as part of a planning proposal for the upzoning and AHCS undertaking an independent viability testing for their individual precincts/project.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>   |
| <p><u>Amenity</u></p> <p>Concern that the SEPP 70 Affordable Housing Contribution Scheme will lead to intensification of densities in the established R2 – Residential Low Density Zone urban areas with associated amenity and infrastructure issues.</p> <p>Issues listed include:</p> <ul style="list-style-type: none"> <li>• adequacy of footpaths</li> <li>• parking overflow on streets</li> <li>• need for convenience to public transport</li> <li>• over development of existing lots</li> <li>• importance of respect for and reinforcement of heritage provisions</li> </ul> <p>It was suggested that place planning processes and subsequent updates to the Byron Development Control Plan 2014 (DCP) are useful avenues to better plan for affordable housing, diversifying housing types and densities within local areas.</p> | <p>Whilst noting the concerns expressed over experiences with infill occurring in established residential areas, an SEPP 70 affordable housing contribution scheme applies to land with an upzoning and only where a contribution is viable. In the case of Byron Shire, as indicated in the Policy, this applies to:</p> <ul style="list-style-type: none"> <li>• Residential investigation areas i.e. possible new release residential areas</li> <li>• Byron Town Centre.</li> </ul> <p>The application of the scheme in existing established zoned R2 and R3 areas could not occur unless there is an upzoning. An upzoning means a change of zone to enable residential development or a change of planning controls (such as floor space ratio) which enables greater residential density on a site.</p> <p>Planning for new release areas enables measures to be put in place in advance for the likely densities and anticipated residents' needs.</p> <p>The SEPP 70 Affordable Housing Contribution Scheme is distinct from two existing other State government regulations facilitating additional housing in established residential areas:</p> <ul style="list-style-type: none"> <li>• SEPP Affordable Rental Housing facilitating additional affordable rental housing.</li> </ul> <p><a href="https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Diverse-and-affordable-housing/Affordable-Rental-Housing-SEPP">https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Diverse-and-affordable-housing/Affordable-Rental-Housing-SEPP</a></p> <ul style="list-style-type: none"> <li>• Recently enacted Low Rise Housing Diversity Code facilitating potential fast track medium density housing.</li> </ul> <p><a href="https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Low-Rise-Housing-Diversity-Code/The-Low-Rise-Housing-Diversity-Code">https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Low-Rise-Housing-Diversity-Code/The-Low-Rise-Housing-Diversity-Code</a></p> <p>Many of the issues raised are more pertinent to the</p> |

| <b>Matter Raised</b>  | <b>Staff response</b>  |
|---|--|
|   | <p>delivery of housing under these provisions, but nevertheless the feedback is useful for Council when planning for new release areas, place planning and DCP reviews.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>   |
| <p><u>Short Term Holiday Let impacts</u></p> <p>Potential use of affordable dwellings for Air BNB.</p> <p>Support of 90 day cap on short term holiday letting to help reduce the need for affordable rental housing.</p>  | <p>Housing delivered under a SEPP 70 Affordable Housing Contribution Scheme must be used for affordable housing. The policy/procedures state that on land on which this type of housing is to be delivered is to remain as Council land. Hence Council will be able to see that this occurs.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>  |
| <p><u>Dwelling targets and dwelling mix</u></p> <p>It was raised that target number of 140 dwellings in the Policy is inconsistent with the possible 190 dwellings identified in Table 1 of the Procedures.</p> <p>Concern was expressed that 20% contribution rate may lead to an excessive number of affordable houses congregated in one location.</p> | <p>It is noted that there is an inconsistency between the yield number in the Policy and the Procedures. Either way the figures are indicative and subject to the actual development outcomes on the land. The numbers in the procedures may need to be revised based on Council (Planning) meeting of 18 June 2020 (<b>resolution 20-276</b>) to include additional investigation areas in the draft residential strategy.</p> <p>It is considered the baseline 140 dwelling target should be retained in the Policy.</p> <p>Section 8 of the Procedures enables review to reflect updates as the residential strategy and subsequent planning proposal/s for investigation areas progress. Such updates will enable community members to remain informed on the ongoing delivery of affordable housing in their locality.</p> <p>As the housing is proposed for new release areas, an opportunity exists for Council to work with the developer and affordable housing providers on the placement, type and design of affordable housing and supporting infrastructure.</p> <p><i>Policy statement of intent 5 requires 'in all cases, will determine the affordable housing contribution form, in order to: a) support a more even distribution of affordable housing within urban areas.'</i></p> <p><b>No amendment of the policy as exhibited is required.</b></p> |
| <p><u>Community involvement in the process</u></p>  | <p>Noted.</p>  |

| Matter Raised   | Staff response   |
|---|--|
| <p>Support for Policy objectives that focus on continued community input in the process of affordable housing delivery</p>  | <p>It however highlighted that separate to the housing under this Policy process, housing under the low rise medium density code – complying development – the applicant is not required under legislation to engage with the community as part of the formal process.</p> <p><b>No amendment of the Policy as exhibited is required.</b></p>  |
| <p><u>Planning agreements (PA)</u></p> <p>Suggested that Council should not enter into a PA unless the development is compatible with the character of the local area.</p>  | <p>It is considered this aspect would be captured under 5.5. <i>When will Council not consider entering a Planning Agreement? (item) v.</i></p> <p><i>When a development is <b>unacceptable on planning grounds</b>, planning benefits offered by the proponent in a Planning Agreement will not make an unacceptable development acceptable.</i></p> <p>The draft Byron DCP Character narratives will provide additional guidance on local residential character.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>  |
| <p><u>Planning agreements (PA)</u></p> <p>Concern was expressed that affordable housing could be used as a tool to lever development that is in appropriate for an area.</p> <p>It was suggested that the Policy clarifies that investigation areas may contain land that may not be suitable for residential development.</p>  | <p>The adoption of this Policy is intended to set a framework to avoid a lever situation occurring.</p> <p>The Residential Strategy is the more appropriate document to provide guidance on land that is suited to residential development. Procedure Item 4.2 states that:</p> <p><i>A land contribution to Council for the purpose of affordable housing requires the land is fit for purpose.</i></p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>  |
| <p><u>SEPP for Affordable rental Housing</u></p> <p>Submissions expressed a dissatisfaction with the housing being delivered under this SEPP issues being:</p> <ul style="list-style-type: none"> <li>• design disconnect with the local character/streetscape</li> <li>• parking</li> <li>• density of development on a given site</li> <li>• locations and local infrastructure that are not</li> </ul> | <p>Noted.</p> <p>This SEPP is a state government regulation and Council does not have the capacity to amend.</p> <p>It should be noted that the Department of Planning, Industry and Environment (DPIE) is currently exhibiting an Explanation of Intended Effect (EIE) for a new Housing Diversity SEPP. The EIE is on exhibition until 9 September 2020. The proposal includes the consolidation of three housing-related SEPPs into one. Staff will be making a submission and will raise again these concerns for DPIE consideration.</p> <p><a href="https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp">https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp</a></p> |



| Matter Raised   | Staff response  |
|---|---|
| <p>necessarily suited to the needs of rental tenants</p> <ul style="list-style-type: none"> <li>the 10 year sunset clause on the requirement of renting at an affordable level</li> </ul> | <p>On going improvements to the Byron DCP are seeking to address the aspects where Council does have the capacity to regulate/guide.</p> <p>The draft Residential Strategy is being used to inform place planning and long range infrastructure planning and delivery.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p> |
| <p><u>Inclusivity</u></p> <p>It was suggested that the Byron DCP include requirements for inclusivity (such as need for disabled, older people and families)</p>                          | <p>This suggestion is supported and it is noted that the draft Residential Strategy Direction 2 actions include review of the Byron LEP and DCP to address this matter, amongst other items.</p> <p><b>No amendment of the Policy and Procedure as exhibited is required.</b></p>   |

**Next steps**

It is recommended that Council adopt the Policy and Procedures without changes.

5

**STRATEGIC CONSIDERATIONS**

**Community Strategic Plan and Operational Plan**

| CSP Objective   | L2  | CSP Strategy  | L3    | DP Action  | L4      | OP Activity   |
|---|-----|---|-------|--|---------|---|
| <b>Community Objective 4: We manage growth and change responsibly</b> | 4.2 | Support housing diversity in appropriate locations across the Shire | 4.2.1 | Establish planning mechanisms to support housing that meets the needs of our community | 4.2.1.3 | Prepare an Affordable Housing contribution scheme under SEPP 70 to be incorporated in the local planning framework controls (Action in Residential Strategy)  |
| <b>Community Objective 4: We manage growth and change responsibly</b> | 4.2 | Support housing diversity in appropriate locations across the Shire | 4.2.1 | Establish planning mechanisms to support housing that meets the needs of our community | 4.2.1.4 | Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock (Action in Residential Strategy) |

10

***Legal/Statutory/Policy Considerations***

The draft Policy has been exhibited in accordance with *Local Government Act 1993* – Section 160 Public notice and exhibition of draft local policy. Under *Local Government Act 1993* – Section 160 the period of public exhibition must be not less than 28 days.

***Financial Considerations***

Not applicable to this report.

***Consultation and Engagement***

The draft Policy and Procedures builds on the extensive engagement undertaken in developing the draft Residential Strategy.

The exhibition was undertaken in line with the Community Participation Plan.

Council is committed to building ongoing and meaningful relationships and partnerships with local community and interest groups about planning matters.

**Report No. 13.3**                      **Final Residential Strategy including submissions review report**  
**Directorate:**                      Sustainable Environment and Economy  
**Report Author:**                  Natalie Hancock, Senior Planner  
    Steve Daniels, Project Officer - Planning Reforms  
5    **File No:**                            I2020/819

**Summary:**

10    Council is preparing a Residential Strategy (Strategy) to provide a policy framework and action plan to guide urban residential development over the next 20 years. How we deliver our future housing will influence the form, layout and character of our towns and villages, as well as the future diversity of community that lives here. The Residential Strategy promotes opportunities for Council  
15    to manage future housing provision in a way that supports the community's desire to leave a better place for future generations.

20    The Strategy relates to future housing in the Bangalow, Brunswick Heads, Byron Bay, Mullumbimby, New Brighton, Ocean Shores, South Golden Beach, Suffolk Park and Sunrise localities.

25    Council in December 2018 resolved (**Res 18-823**) to exhibit a draft Residential Strategy together with appendices and background report, noting that the documents considered at the time were still working drafts that required further refinements prior to public exhibition.

Exhibition of a draft Strategy occurred from 28 August – 11 October 2019, with engagement focused on housing issues, Strategy policy, directions and actions.

30    Amongst the submissions received were 19 landowner requests for their land to be designated as a possible residential area in the Strategy. These requests were considered by Council at the 18 June 2020 Planning Meeting where it resolved (**Res 20-276**) to update the Strategy to include six additional investigation areas, and prior to reporting back the final Strategy, consult with the community and relevant government agencies on the additional areas.

35    This report provides:

- an overview of exhibition and engagement to date
- a Submissions Review Report (Attachment '1') on matters raised during the August 2019 exhibition (not previously reported to Council), together with the additional sites exhibited in August 2020
- 40    • copies of submissions from August 2019 exhibition (Attachment '2': 2019 - Government agency submissions and Attachment '3': 2019 - Confidential community submissions including landowner requests for their land to be added to the Strategy)
- copies of submissions from August 2020 'additional lands' exhibition (Attachment '4': 2020 - Government agency submissions and Attachment '5': 2020 - Confidential community  
45    submissions)
- a final Residential Strategy for consideration and adoption (Attachment '6')
- a Residential Strategy 'Background Report' containing a compilation of analyses that have informed the final strategy (Attachment '7')
- a summary of key revisions to draft strategy documentation culminating in the final Strategy as  
50    presented.

The most significant revisions to the draft residential strategy have been in response to:

- matters raised by the Department of Planning, Industry & Environment (DPIE), as these are considered necessary to enable the DPIE's endorsement of a final Residential Strategy
- inclusion of additional 'investigation area' lands
- Council's more recent work (post the 2019 exhibition) in the affordable housing, local character and infrastructure planning spaces.

Subject to Council supporting the recommendations contained in this report, a final Strategy will be forwarded to the DPIE together with the other attachments listed above.

The final Strategy provided with this report (Attachment '6') includes additional reader information on how the Strategy has been revised. This version will be provided to the DPIE along with a final 'clean' version (i.e. where such information has been removed and incorporating any changes arising from Council deliberations on the final Strategy) to assist with their review.

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**RECOMMENDATION:**

1. **That Council does not support the following land being included as an 'investigation area' in the final draft Residential Strategy:**
  - a) **Lot 1 DP1256460, 152 Stuart Street, Mullumbimby due to high hazard flooding and contamination constraints**
  - b) **any further expansion to that part of Lot 350 DP 755695 located on Ewingsdale Road, Byron Bay (Strategy investigation area '10'), as exhibited in August 2019**
  - c) **Lot 285 DP 1198641, 64 Corkwood Crescent, Byron Bay as:**
    - i. **a review of the relevant history has identified that landowners previously seeking a change to the 7(d) Scenic Escarpment zone boundaries have been consistently advised that this can only be considered as part of a Shire wide study; and**
    - ii. **consultation with the Department of Planning, Industry, and Environment on potential land use constraints determined that the wider range and density of permissible uses in a residential zone could adversely impact on the significant mapped biodiversity values on this and adjacent land.**
2. **In relation to recommendation '1.', that Council advise the respective landowners/consultants of Council's decision and the reasons for excluding the above land from the Strategy.**
3. **That Council notes the following updates made in relation to the draft Strategy 'investigation areas' and other sections:**
  - a) **strategy investigation area '5', comprising Lot 1 DP803292, Lot 2 DP1256460, Lot 2 DP803292, Lot 4 DP837851, Lot 5 DP1111848; 124, 127 and 130 – 134 Station Street, Mullumbimby, is identified only for a review of minimum lot size provisions and not a zone change due to flooding and access limitations, and is to be included in the Saltwater Creek Precinct structure planning process**
  - b) **the inclusion of "acoustic impacts" in Strategy Action '9' Saltwater Precinct structure plan considerations, in relation to traffic management**
  - c) **inclusion of the following additional wording in the profile for Investigation Area 10 ( Part of Lot 350 DP 755695, Ewingsdale Road, Byron Bay in Appendix C):**  
***"final development footprint will be determined following further flood***

*assessment. Any variations must be in accordance with the North Coast Regional Plan Urban Growth Area Variation Principles (Appendix A) and will need to be considered and justified through a strategic planning or rezoning process. Only minor and contiguous variations to urban growth areas in the coastal strip will be considered due to its environmental sensitivity and the range of land uses competing for this limited area"*

- d) the Residential Strategy updates outlined in this report's 'Table 2: Summary of key strategy revisions to reflect the outcomes of consultation' and Council's more recent work in the affordable housing, local character and infrastructure planning spaces
  - e) the additional reader information on how the Residential Strategy has been revised, which will be removed from the final version when submitted to NSW Department of Planning, Industry & Environment for endorsement.
4. That Council adopts the Residential Strategy as contained in Attachment '6' (E2020/5277) and forward to the NSW Department of Planning, Industry & Environment for final endorsement together with the Background Report (Attachments '1' and '7', E2020/37962 and E2020/91141 respectively).
  5. That Council delegates authority to the Director Sustainable Environment & Economy, through the General Manager, to amend the Residential Strategy in relation to any consequential (non-policy) and/or other minor editorial amendments required for clarity or accuracy, prior to submitting to Department of Planning & Environment for final endorsement.

**Attachments:**

- |    |   |   |
|----|---|---|
|    | 1 | Submissions review report, E2020/37962   |
| 5  | 2 | Combined government agency submission on draft residential strategy Aug 2019, E2020/14681    |
|    | 3 | Confidential - Combined community submissions Aug 2019 exhibition, E2020/14682  |
|    | 4 | Combined government agency submissions on additional land, E2020/92502   |
|    | 5 | Confidential - Combined community submissions on additional lands Aug 2020, E2020/69671   |
|    | 6 | Final draft Residential Strategy, E2020/5277   |
| 10 | 7 | Residential Strategy Background Report, E2020/91141    |
|    | 8 | Letter of response on the North Coast Settlement Planning Guidelines - Department of Planning, Industry and Environment, S2019/9516  |
|    | 9 | Special Disclosure for Pecuniary Interest Annexure, E2012/2815   |
| 15 |   |   |

## REPORT

### ***Background and Purpose***

- 5 Council is preparing a Residential Strategy (Strategy) to provide a policy framework and action plan to guide urban residential development over the next 20 years.

The Strategy specifically relates to future housing in Bangalow, Brunswick Heads, Byron Bay, Mullumbimby, New Brighton, Ocean Shores, South Golden Beach, Suffolk Park and Sunrise.

- 10 The Strategy is the result of three years of planning, research and community consultation. This has included the Housing Needs Report, the Housing Summit, targeted community engagement, the Accessible Housing Project, the Housing Roundtable and the Housing Charrette. Overall, this collection of work clearly indicated that a diverse supply of housing for a range of incomes, lifestyle choices, household types and life stages is needed to maintain our community diversity and social cohesion.

- 15 Council in December 2018 resolved (**Res:18-823**) to exhibit a draft Strategy and associated background documents, noting that the documents considered at the time were still working drafts that required further refinements prior to public exhibition.

- 20 A draft Strategy was exhibited from 28 August – 11 October 2019. The engagement sought to inform on housing issues, Strategy policy, directions and actions. The feedback has assisted in its finalisation.

- 25 Amongst the submissions received were 19 landowner requests for their land to be designated as a possible residential area in the Strategy. Council considered these requests at the 18 June 2020 planning meeting where it resolved (**Res 20-276**) to update the Strategy to include six additional investigation areas and prior to reporting back the final Strategy consult with the community and relevant government agencies on the additional areas.

- 30 This report provides:

- an overview of the exhibition engagement processes
- a Submissions Review Report (Attachment '1') on matters raised during the August 2019 exhibition (not previously reported to Council), and the additional sites as exhibited in August 2020, together with copies of government agency and confidential community submissions from both exhibitions (Attachments '2' '3' '4' and '5')
- a final Residential Strategy for consideration and adoption (Attachment '6')
- a Residential Strategy Background Report containing a compilation of analysis that has informed the final strategy (Attachment '7')
- a summary of key revisions to draft strategy documentation culminating in the final Strategy as presented.

The most significant revisions to the draft Strategy have been in response to:

- 45 • matters raised by the Department of Planning, Industry & Environment (DPIE), as these are considered necessary to enable the DPIE's endorsement of a final Residential Strategy
- inclusion of additional lands
  - Council's more recent work (post the 2019 exhibition) in the affordable housing, local character and infrastructure planning spaces.

- 50 This report's recommendations are to be workshopped with Councillors at a strategic planning workshop on 3 December 2020.

***Overview of engagement***

An Engagement Plan for the strategy was endorsed at the 13 December 2019 Council meeting.

- 5 This engagement built on earlier targeted engagement used to inform draft Strategy content. Diagram 1 on page 5 - Submissions Review Report (Attachment '1') summarises the pathway taken in looking at important issues such as housing affordability.

Engagement involved three key steps:

- 10
- Shaping our neighbourhoods discussion (May 2019)
  - Full exhibition (28 August – 11 October 2019)
  - Additional lands exhibition (1 - 31 August 2020).

15 The full exhibition program took place over a six week period involving the following activities and methods of communication:

- Notification letters to Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) surrounding Councils, Tweed Byron Local Aboriginal Land Council and state government agencies
- Public media, Council website, Facebook page and an e-newsletter to advertise engagement
- Provision of information including the Strategy and Background Report, FAQ and fact sheets, and information on how to lodge a submission
- Farmers markets stalls
- One-on-one meetings and responses to emails & phone calls.

***Submission Profile***

25 A Submissions Review Report is provided as Attachment '1'.

A total of 66 submissions were received to the 2019 full exhibition and can be considered in two categories:

- 30
- State government agency response
  - Community groups and broader community response.

35 A total of 22 submissions were received to the additional lands 2020 exhibition and are appropriately considered on a lot by lot basis.

Government agency submissions (Attachments '2' and '4') were from the following:

- 40
- NSW Department of Planning, Industry and Environment - Division of Planning Divisions (DPIE - PD)
  - NSW Department of Planning and Environment Biodiversity and Conservation Division (DPIE - BCD)
  - Transport for NSW (TfNSW)
  - NSW Department of Primary Industries (DPI)
  - 45 — Tweed Shire Council made a submission on the full exhibition only
  - Rous Water made a submission on the full exhibition only.

Copies of the community submissions are provided as confidential Attachments '3' and '5' to this report.



The Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) (part of Attachment '3') made a submission on the 'full exhibition' engagement only.

**5 Full exhibition: key submission issues (August 2019)**

The key issues raised under the full exhibition by agencies are summarised below.

*Department of Planning Industry and Environment - Planning Division (DPIE - PD)*

10 The DPIE – PD submission identified the need for the Strategy to:

- be consistent with state policy positions under:
  - State Environmental Planning Policies (SEPP)
  - [North Coast Regional Plan 2036](#) (NCRP)
  - *Environmental Planning and Assessment Act 1979* [Section 9.1 Directions](#)
- 15 • set detailed site specific investigations required in support of any future rezoning/development applications for investigation areas
- be supported by an assessment against NCRP Urban Variation Principles and the North Coast Settlement Planning Guidelines. Clarification was sought from the DPIE – PD as to applicability of the guidelines given the draft Strategy was exhibited prior to release of the settlement planning guidelines on 23 October 2019. Advice indicated that the guidelines are not mandatory for exhibited land (Attachment '8' Letter of response on the North Coast Settlement Planning Guidelines - Department of Planning, Industry and Environment)
- 20 • be updated in its appraisal of the land and housing delivery impediments or opportunities having regard to more recent data, policy or legislative changes such as the infrastructure capacity or the Low Rise Housing Diversity Code
- 25 • where an action references a process that is affected by a state government guideline, such as SEPP 70 Affordable housing contribution scheme that such guidelines are to be (explicitly) referred to in the delivery of the action.

30

*Department of Primary Industry (DPI)*

Matters raised by DPI raised were largely consistent with DPIE. Of note was a preference to avoid investigation areas on significant farmland and where such land was impacted, the inclusion of measures to address avoidance of speculation and/or increased land use conflict. This request makes it difficult to identify new housing land in Byron Shire due to the proximity of such farmland to all of our towns and villages. The land identified in the Strategy is a logical extension of established urban areas and within a comfortable 'localised' walking distance of the town/village business centres and schools.

35

**40 Transport for NSW (previously Roads and Maritime Services) (TfNSW)**

The key interest for TfNSW is the safety and efficiency of the road network, traffic management, integrity of infrastructure and the integration of land use and transport. In this regard it should be noted that additional land releases that directly impact the Ewingsdale Road and Pacific Highway interchange may not be supported until improvements are realised.

45

*Department of Planning Industry and Environment – Biodiversity and Conservation Division (DPIE - BCD)*

As with TfNSW & DPIE - PD, the DPIE - BCD identified a need to identify site specific investigations required in support of any future rezoning/development applications for investigation areas.

- 5 To address this common agency request (for all sites), the Strategy has been revised to include greater guidance on the specific investigation areas moving forward to a rezoning/development application.

*Rous County Council*

- 10 Rous advice indicated that the projected dwelling growth in the Strategy (2019 version) is generally within the Peak Day forecast and has been allowed for in current augmentation planning. Where the projected dwelling growth outpaces the peak day forecast, there is sufficient capacity in the existing bulk water supply infrastructure to meet the increased water demand. Since receiving this advice, Council staff have been working with consultants acting on behalf of Rous to provide updated growth figures and locations as part of the long term water security planning. These numbers generally accord with those in the final Strategy.

*Arakwal*

- 20 The Arakwal submission identified a need for detailed site specific cultural heritage investigations and requested consideration to be given to identifying opportunities and levers to achieve additional housing on Country. Following receipt of this submission staff have worked with Arakwal officers to frame a 'Protocol' to be included in the Strategy for guidance on key cultural heritage assessments. The Byron Shire Affordable Housing contribution Policy and procedures adopted by Council in August 2020 are an important step towards establishing levers for access to housing.

25 *Community groups and broader community*

Submissions from **community groups and the broader community** indicated general support for the Strategy.

- 30 The feedback focused on the policy directions as contained in the draft Strategy with the following points in common:

- supporting the Strategy's focus on building communities
- planning for climate change in particular flood and stormwater management
- coordinating land use planning with infrastructure provision
- 35 • protecting certain areas such as koala habitat and agricultural land from development
- a juxtaposition between those seeking to limit rather than manage growth
- how to better manage the impacts of short term holiday rental on housing supply for residents.

40 ***Additional lands exhibition: key submission issues (August 2020)***

'Table 1: Key points on additional lands' provide a snapshot summary of submission points and staff response to these on the proposed additional lands. More detail on these submissions is provided in the Submission Review Report (Attachment '1').

- 45 Figure 1 below shows the location of the additional lands considered.



Mullumbimby



Bangalow



Byron Bay



Suffolk Park

Figure 1: Additional land locations

Table 1: Key points on additional lands

| Site # – location shown on Figure 1  | Key points raised  | Staff comment   | Strategy response   |
|--|--|---|---|
| <b>1. 20 Prince St, Mullumbimby part of Lot 12 DP 527314</b>   | <ul style="list-style-type: none"> <li>– should be considered in conjunction with adjoining investigation area</li> </ul>  | <ul style="list-style-type: none"> <li>– supported</li> </ul>   | 20 Prince Street, Mullumbimby merged with the adjoining investigation area to form Investigation area '8'   |
| <b>2. 152 Stuart St, &amp; 124, 127, 130 - 134 Station St, Mullumbimby (Lot 1 DP1256460, Lot 1 DP803292, Lot 2 DP1256460, Lot 2 DP803292, Lot 4 DP837851, Lot 5 DP1111848)</b> | <ul style="list-style-type: none"> <li>– traffic impacts including noise</li> <li>– flooding and stormwater management</li> <li>– is infill the best way to deliver affordable housing and will it provide good urban design outcomes</li> </ul> <p>Staff identified possible contamination limitations as well.</p> | <ul style="list-style-type: none"> <li>– relevant issue</li> <li>– relevant issue</li> <li>– noted</li> </ul> | <p>Strategy Investigation Area '5' - Lot 1 DP1256460 not included.</p> <p>See recommendation 1a) following this table.</p> <p>This land added to Strategy Action 10 – <i>Support the delivery of a high-level concept structure plan for the Saltwater Creek Precinct.</i></p> <p>see recommendation 2a) following this table.</p> <p>Acoustic impacts included as part of the Strategy Action 9 Saltwater Precinct structure plan investigations. See recommendation 2b) following this table.</p> |
| <b>3. Part of Lot PT32/1169053 located east of Tuckeroo Avenue, Mullumbimby</b>  | <ul style="list-style-type: none"> <li>– flooding and stormwater management implications for this and adjacent land</li> <li>– an expectation that the land would only be developed as R5</li> </ul>   | <ul style="list-style-type: none"> <li>– relevant issue</li> <li>– noted</li> </ul>                           | <p>Strategy Investigation Area '4'.</p> <p>Matters incorporated in Strategy Appendix C investigation area profile - housing and infrastructure planning.</p>  |

| Site # – location shown on Figure 1  | Key points raised   | Staff comment   | Strategy response   |
|--|---|---|---|
| <b>4. 31 Ballina Road (Lot 2 DP 1260751) previously part of 21 Ballina Road Bangalow (Lot 3 DP1220608)</b> | <ul style="list-style-type: none"> <li>– acoustic issues associate with highway traffic</li> <li>– flooding</li> <li>– site is steep in parts</li> </ul>  | <ul style="list-style-type: none"> <li>– all relevant issues</li> </ul>   | <p>Strategy Investigation Area '13'. Matters incorporated Strategy Appendix C investigation area profile - key issues and infrastructure planning.</p>  |
| <b>5. Part of Lot 350 DP 755695, Ewingsdale Road, Byron Bay</b>  | <ul style="list-style-type: none"> <li>– landowner request not to include as land uses being considered may not necessarily fit neatly within the Residential Strategy.</li> <li>– the site adjoins the existing Byron Bay urban area and may be considered under the provisions of the North Coast Regional Plan 2036 variation principles</li> <li>– flooding and stormwater management investigation is being undertaken</li> </ul>            | <ul style="list-style-type: none"> <li>– noted</li> </ul>   | <p>Extension not shown in Strategy see recommendation 1b) following this table</p> <p>Strategy Appendix C investigation area profile includes wording as contained in the recommendation 2 c) following this table.</p> |
| <b>6. Part 64 Corkwood Cr, Suffolk Park (Lot 285 DP1198641)</b>  | <ul style="list-style-type: none"> <li>– part of the scenic escarpment</li> <li>– potential adverse impacts on moderate – high biodiversity values on this and adjacent land</li> </ul> <p>Landowner raised:</p> <ul style="list-style-type: none"> <li>– site has an approved dual occupancy (partially constructed)</li> <li>– front section is within and abuts land in a R2 zone</li> <li>– further development potential would be</li> </ul> | <ul style="list-style-type: none"> <li>– relevant issues</li> </ul> <p>Landowner</p> <ul style="list-style-type: none"> <li>– an 'attached' dual occupancy is permitted in a 7d Zone, hence a zone change is not required to enable this use</li> <li>– Noted. Not uncommon for larger land parcels to have mixed zoning</li> <li>– noted and agree that further</li> </ul> | <p>Not included in the Strategy – see recommendation 1c) below</p>  |

| Site # – location shown on Figure 1 | Key points raised   | Staff comment                    | Strategy response |
|-------------------------------------|---|----------------------------------|-------------------|
|                                     | extremely limited due to existing sensitive vegetation on the site, bushfire and stormwater constraints | development potential is limited |                   |

***Recommendations pertaining to additional lands***

- 5 1. That Council does not support the following land being included as an ‘investigation area’ in the final draft Residential Strategy:
  - a) Lot 1 DP1256460, 152 Stuart Street, Mullumbimby due to high hazard flooding and contamination constraints.
  - 10 b) any further expansion to that part of Lot 350 DP 755695 located on Ewingsdale Road, (Byron Bay investigation area ‘10’), as exhibited in August 2019
  - c) Lot 285 DP 1198641, 64 Corkwood Crescent, Byron Bay as:
    - 15 i. a review of the relevant history has identified that landowners previously seeking a change to the 7(d) Scenic Escarpment zone boundaries have been consistently advised that this can only be considered as part of a Shire wide study; and
    - ii. consultation with the Department of Planning, Industry, and Environment on potential land use constraints determined that the wider range and density of permissible uses in a residential zoning could adversely impact on the significant mapped biodiversity values on this and adjacent land.
- 20 2. That Council notes the following updates made in relation to the draft Strategy ‘investigation areas’:
  - a) strategy investigation area ‘5’, comprising Lot 1 DP803292, Lot 2 DP1256460, Lot 2 DP803292, Lot 4 DP837851, Lot 5 DP1111848; 124, 127 and 130 – 134 Station Street, Mullumbimby, is identified only for a review of minimum lot size provisions and not a zone change due to flooding and access limitations, and is to be included in the Saltwater Creek Precinct structure planning
  - 25 b) the inclusion of “acoustic impacts” in Strategy Action ‘9’ Saltwater Precinct structure plan considerations, in relation to traffic management
  - 30 c) inclusion of the following additional wording in the profile for Investigation Area 10 ( Part of Lot 350 DP 755695, Ewingsdale Road, Byron Bay in Appendix C): *“final development footprint will be determined following further flood assessment. Any variations must be in accordance with the North Coast Regional Plan Urban Growth Area Variation Principles (Appendix A) and will need to be considered and justified through a strategic planning or rezoning process. Only minor and contiguous variations to urban growth areas in the coastal strip will be considered due to its environmental sensitivity and the range of land uses competing for this limited area”*
  - 35

***Strategy revision***

40 Table 2 presents a summary of key revisions made to the exhibition version of the draft Residential Strategy. The revisions reflect state government agencies, traditional owner and community input as well updates in response to Council policy and/or practice. The information is presented in an

order consistent with the Strategy sections. Item numbers 5, 6, 7, 11, and 14 are considered to be the more significant revision matters. Table 2 forms the basis of the report Recommendation 3 d).

- 5 Attachment '6' provides a version of the final Strategy with text highlighted to show where/how changes have been incorporated. The explanation of these edits to the draft Strategy will be removed from the final version when submitted to the NSW Department of Planning, Industry & Environment for endorsement. This forms the basis of the report Recommendation 3 e).

Table 2: Summary of key strategy revisions

| # | Strategy section reference           | Key revision   | Basis for document change<br>Where government agency advice – see above for acronym   |
|---|--------------------------------------|--|---|
| 1 | Vision & Structure                   | Document structured into four sections:<br><br>Section 1: Overview includes the vision<br>Section 2: Background<br>Section 3: Policies and Directions<br>Section 4: Making it happen   | Guided by DPIE-PD and community feedback on improving the reader useability.  |
| 2 | Why does Byron Shire need a strategy | Added bullet point: <i>'to ensure residential development is directed to areas of least biodiversity value so as to limit adverse impacts on the biodiversity, coastal and aquatic habitats and water catchments and help reduce development costs and time frames.'</i> | Guided by DPIE-BCD advice - update responds to state government environmental policy.   |
| 3 | Terms throughout                     | Key term changes:<br><br>'accessible' to 'affordable'<br><br>'possible area for residential' to 'investigation areas'  | Both guided by of DPIE-PD advice.<br><br>'Affordable' consistent with state terminology.<br><br>'Investigation area' clarifies land may be suitable for development and further detailed assessment is needed prior to being determined as a 'new release area' i.e. land identified as suitable for future urban residential development.<br><br>Consistent with the NCRP, <a href="#">Local Strategic Planning Statement</a> and Business and Industrial Lands Strategy (BILS) terminology. |



| # | Strategy section reference   | Key revision  | Basis for document change<br>Where government agency advice – see above for acronym  |
|---|--|---|--|
| 4 | Policy 1<br>Direction 1.2<br><br>Urban residential suitable for use principles<br>&<br>Appendix B  | Three changes:<br><br>a) lead sentence added to clarify a need for consistency with state and regional policy when applying the 'principles'.<br>b) 'principle ii' revised on farmland of state or regional significance.<br>c) 'principle vii' revised and Appendix B: Protocol framework for participatory working with the Aboriginal community added.   | a) & b) Guided by DPIE-PD and DPI advice. Consistent with the approved BILS 'principles' terminology.<br><br>c) Guided by Arakwal feedback to better reflect their unique connection to their ancestral lands. This is consistent with the approved BILS 'principles' and protocol.  |
| 5 | Policy 1<br>Direction 1.2<br><br>Capacity analysis & Housing supply summary<br><br>An extract of Strategy Table 3 follows this table<br><br>(some of this information was previously contained in Policy 3 Figure 7) | Updated subsection to reflect:<br><br>– added investigation areas (IA)<br>– infill capacity based on revised LEP 2014 minimum lot sizes for low rise medium density<br>– a 10% allowance in new housing stock being potentially affected by short term rental accommodation (STRA).<br><br><i>How has the potential yield changed?</i><br><br>– Mullumbimby's investigation area yield increased from 445 dwellings (2019 exhibited version) to a range of 823 – 925 additional dwellings.<br>– Other towns and villages have overall minor variations to the 2019 stated figures.<br>– The overall Shire wide dwelling supply to 2036 (19275 dwellings) remains consistent with the <a href="#">North Coast Regional Plan 2036</a> minimum supply figure (19,250 dwellings). | Guided by DPIE-PD and community feedback seeking greater explanation of housing needs and supply.<br><br>The NCRP minimum supply figure does not allow for housing stock used as (STRA) which is recognised by the NSW government to be at very high levels in Byron Shire. STRA may occur within existing residential zone areas as well as new release areas. At the <a href="#">Council meeting 12 Dec 2019</a> it was resolved <b>Res 19-676</b> to 'investigate and apply an appropriate planning mechanism to limit 10% of the total housing stock in use as non-hosted STRA'.<br><br>Mullumbimby's additional dwellings result from additional investigation areas being included, as well as more detailed Saltwater Creek Precinct analysis of flood risk and stormwater management and a proposed R1 General Residential zone for Lot 22 (IA# 7 – as reported to Council at the November 2020 planning meeting). |
| 6 | Policy 1<br>Direction 1.2 -<br><br>Land for housing<br><br>Actions 5,6,7,&   | New subsection on 'investigation areas' cross referenced to new Strategy Actions 4,5, 6 & 7 and Appendix C Investigation area profiles containing:  | Guided by DPIE-PD advice and community feedback requesting for greater clarity on the process moving forward.<br><br>The profiles give clarity to the  |

| # | Strategy section reference   | Key revision   | Basis for document change<br>Where government agency advice – see above for acronym  |
|---|--|--|--|
|   | 8<br>&<br>Appendix C   | <ul style="list-style-type: none"> <li>– area image</li> <li>– a brief description of strengths</li> <li>– housing diversity, character and affordability contribution</li> <li>– key issues requiring investigation</li> <li>– infrastructure planning matters:                             <ul style="list-style-type: none"> <li>• <b>staging - Mullumbimby only</b></li> <li>• flooding and stormwater management</li> <li>• movement and access</li> <li>• water and sewer including potential reuse water distribution systems.</li> </ul> </li> </ul> <p>Staging priority given to areas most likely to deliver the highest proportion affordable housing. Under staging, stage 2 lands would not be supported to progress to a planning proposal until post June 2024.</p> | <p>investigation process and housing outcomes sought.</p> <p>The staging program applied to assist with Mullumbimby's infrastructure upgrade delivery. Elements include: a new water treatment plant; an extended Rous Water connection into Mullumbimby; and reuse water distribution mains construction.</p> <p>The prioritising is consistent with Strategy Direction 2.2 supporting affordable housing delivery.</p> <p>A reuse water system is part of Council's evolving framework for guiding the strategic direction of (recycled) water management.</p> |
| 7 | Policy 1 Direction 1.2 -<br><br>Land for housing<br><br>Additional investigation areas | <p>Added the following investigation areas to the strategy:</p> <ul style="list-style-type: none"> <li>i. part of 20 Prince Street Mullumbimby.</li> <li>ii. 124,127,130 -134 Station Street Mullumbimby</li> <li>iii. part of the land part of Lot PT32/1169053 located east of Tuckeroo Avenue.</li> <li>iv. 31 Ballina Road Bangalow.</li> </ul>  | <p>As addressed in the report to Council's 18 June 2020 planning meeting (<i>Res 20-276</i>), Submission summary review report (Attachment '1') and <b><i>Submissions on additional lands (August 2020)</i></b> section of this report.</p> <p><b><i>Res 20-276</i></b> <a href="#">Planning meeting June 2020</a></p>   |
| 8 | Policy 1 & 3<br>Strategy maps & investigation areas numbers                            | <p>Strategy Policy 1 Maps 1 - 6 combine infill, pipeline and investigation areas on a by town or village. The investigation areas have been renumbered. To view Maps see approx. page 34 of the Strategy (Attachment '6').</p>   | <p>Changes to improve usability of maps.</p> <p>New numbering provides a more logical sequence.</p>  |
| 9 | Policy 1 Action 3  | <p>Revised wording including looking at affordable housing options as part of Council car parks.</p>   | <p>Action amended to capture Council <b><i>Res 20-26</i></b>. <a href="#">February Council meeting</a>, possible future opportunities yet to be identified and to better align with concepts in the 'Explanation of</p>  |

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

| #  | Strategy section reference   | Key revision   | Basis for document change<br>Where government agency advice – see above for acronym  |
|----|--|--|--|
|    |  |  | intended effects' in the SEPP Housing Diversity.   |
| 10 | Policy 2 Action framework & Action 17 (old action 15)  | Revised to include an explanation and updated action on a SEPP 70 Affordable housing contribution scheme.  | Affordable housing provisions are consistent with <b>Res 19-636 Council meeting 12 Dec 2019</b> and <b>Res 20-365 Planning meeting 13 August 2020</b> - Affordable Housing Contribution Policy.<br><br>Funding is provided in the 2020-21 budget for progression of Action 17.   |
| 11 | Policy 2 Table 5 ( old figure 6)<br>See extract of Table 5 below this table<br><br>Also Appendix F Key housing terminology and definitions – definitions of lots included. | A revised Table 5 – Lot diversity and size mix now shows a mix combination in relation to residential zones. The lots comprise:<br><ul style="list-style-type: none"><li>– Micro lot</li><li>– Compact Lot</li><li>– Traditional lot</li><li>– Medium density lot</li></ul> Facilitates new release land to generally have:<br><ul style="list-style-type: none"><li>– R2 &amp; R3 Zones - 45% of lots secured for low rise medium density housing and/or compact lots.</li><li>– R1 General Residential Zone - 40% lots secured for medium density housing and/or micro lots.</li></ul> | Guided by DPIE – PD and community feedback and emerging provisions for a Lot 22 - R1 General Residential Zone in response to investigative work. A lot size mix allocation is viewed as an appropriate means to meet the requirements of the <a href="#">North Coast Regional Plan 2036</a> – Action 23.1. to 'encourage housing diversity by delivering 40 per cent of new housing in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400 square metres, by 2036.'<br><br>Definitions inserted in response to community request for greater explanation of terms. |
| 12 | Policy 2 Actions   | Revised actions to reflect early implementation progress in the delivery of a number of actions such as LEP minimum lots sizes for manor houses.   | Revisions reflect more recent work by Council.   |
| 13 | Policy 2 Actions & Appendix D  | Draft criteria for affordable housing and social housing, urban villages intentional community refined and included as Strategy Appendix D.  | Criteria in the 2019 exhibition were separate to the strategy document.<br><br>Intentional community criteria refined with a community member's input.<br><br>Affordable housing refined to reflect more recent work in this space by Council such as the Affordable Housing Contribution Policy.  |

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

| #  | Strategy section reference  | Key revision   | Basis for document change<br>Where government agency advice – see above for acronym   |
|----|---|--|---|
| 14 | Policy 3<br><br>Character Narratives and Action 21 (old 18)<br><br>Appendix E | Character narratives removed.<br><br>Action revised to note Development Control Plan (DCP) local residential character narratives will be supplemented by a local residential <i>Style Guide</i> over the coming year.<br><br>Community ideas and initiatives to assist with this work moved to Strategy Appendix E. | Narratives removed as have now been included in the DCP 2014.<br><br>The DCP versions reflect feedback from residential strategy submissions as summarised in the submissions report (Attachment '1').<br><br>Consistent with Council <b>Res:20-473</b><br><a href="#">Planning meeting 17 Sept 2020</a><br><br>Funding provided in the 2020-21 budget for delivery of Action 21. |
| 15 | Policy 4<br><br>Action 25 (old 22)  | Revised to consider the implications to land owner existing use rights.<br><br>Pertains to a possible change from residential to tourism zone in the Shirley St north area.  | Guided by DPIE – PD and landowner feedback.   |
| 16 | Section 5<br>Monitoring and review  | Added new dot point – “examine the local environmental plan minimum lot size provisions for low rise medium density development, and assess whether the provisions as they stand continue to successfully support meeting Byron Shire local housing needs”.  | Responds to DPIE – PD’s comment for the Strategy to consider alternative options for housing should the some investigation areas (on closer examination) not yield the dwelling numbers anticipated.  |
| 17 | Appendix F<br>Housing Terms and definitions                                   | Added the following to the key worker list: cleaners, property maintenance (handymen, plumbers, carpenters, electricians, garden maintenance).   | The inclusion was suggested by a community member and is appropriate as it supports the tourism component of the Byron Shire economy.   |

Extract of Residential Strategy ‘Table 3’ summarising possible dwelling yields by land source and locality (as referenced in #5 above):

**Table 3: Estimate of Dwelling Yield by Land Supply Type and Locality**

| Urban locality<br>(map ref)                      | Existing dwellings<br>(census 2016) | Dwellings commenced 2016-2017<br>source:<br><a href="#">Housing and Land Monitor</a> | Approved for residential and zoned vacant | Infill based on current zoning - dispersed locations <sup>5</sup> | Investigation areas | Summary total additional dwelling capacity 2016 - 2036 (rounded)  | Total projected dwellings capacity as at 2036 (rounded) |
|--|-------------------------------------|--|---|---|---------------------|---|---|
| Mullumbimby (1)                                  | 1,774                               | 37   | 231                                       | 160 <sup>2</sup>  | 925 <sup>3</sup>    | 1,355 <sup>3</sup>  | 3,130   |
|  | 0                                   | 0  | 0   | 0   | 823 <sup>4</sup>    | 1,250 <sup>4</sup>  | 2,995   |
| Bangalow (2)                                     | 745                                 | 32   | 105                                       | 85  | 96                  | 315   | 1,065   |
| Brunswick Heads (3)                              | 1,025                               | 9  | 213                                       | 43  | 0                   | 265   | 1,290   |
| Byron Bay & Sunrise (4)                          | 3,039                               | 95   | 800 <sup>1</sup>                          | 113   | 33                  | 1,040   | 4,080   |
| Suffolk Park (4)                                 | 1,699                               | in above figure  | 0   | 95  | 0                   | 95  | 1,795   |
| Ocean Shores, Sth Golden Beach, New Brighton (5) | 2,966                               | 55   | 21  | 211   | 0                   | 290   | 3,255   |
| Combined Urban areas (6)                         | 11,248                              | 228  | 1,370                                     | 707   | Range 952 – 1,054   | Range 3,250 – 3,355<br>3,300 as av.<br>(88% of new <sup>6</sup> ) | Range 14,500 – 14,600<br><br>14,550 as av.              |
| Rural areas                                      | 4,294                               | -  | -   | -   | -                   | 430 (12% of new)  | 4,725   |
| Shire total                                      | 15,542                              | -  | -   | -   | -                   | 3,732   | 19,275 <sup>7</sup>                                     |

**Note 1.** Based on West Byron providing 650 additional dwellings, it is noted that this figure may be subject to review pending court case determinations

**Note 2.** Hospital part of infill figure

**Note 3.** Scenario 1 Yield – based on private landowners for investigation areas using a Residential Strategy R2/R3 diversity lot mix & R1 mix for Council land

**Note 4.** Scenario 2 Yield – based on all investigation areas using a Residential Strategy R2/R3 diversity lot mix – refer to Policy 2: Table 5 for an explanation

**Note 5.** These estimates are based on current regulations and anticipated infill take-up range of 10 to 15%.

**Note 6.** Consistent with Strategy Policy 1 Direction 1.1

**Note 7.** Aligns with the North Coast Regional Plan 2036 - Figure 10: Minimum housing supply (2016-2036) - Byron Shire; 19,250 dwellings

Extract of Residential Strategy Table 5: Lot Diversity and size mix for land identified within investigation areas (as referenced in #11 above):

5

| Column 1 – Lot type                          | Column 2 - Mix of lots per net developable area |                              |                               | Column 3 - Lot size range               |
|--|---|------------------------------|-------------------------------|---|
|  | <b>A: Zone R1</b>                               | <b>B: Zones R 2 &amp; R3</b> | <b>C: R2 along Ballina Rd</b> |   |
| Type A Traditional lots                      | 10%   | 10%                          | 70                            | 450 – 799m <sup>2</sup>                 |
| Type B compact lots                          | 51%   | 35%                          | 30                            | 201 – 449m <sup>2</sup>                 |
| Type C medium density lots                   | 12%   | 45%                          | 0                             | 800m <sup>2</sup> - 1,400m <sup>2</sup> |
| Type D micro lots                            | 27%   | 10%                          | 0                             | 50 - 200m <sup>2</sup>                  |
| <b>Byron bespoke intentional communities</b> | As appropriate                                  | As appropriate               | As appropriate                | As appropriate                          |

### **Background Report updates**

10 The Strategy looks at population projections and the expected demand for new dwellings. In determining where and how to best deliver new housing in Byron Shire urban areas, an evidence-

based analysis of land use planning issues has been undertaken over a number of years to support the Strategy policy, directions and actions. The background report provides a culmination of this contextual information under the following themes:

- collective strategic thinking
- 5 • planning framework – includes the state policy consistency for investigation areas
- residents, households and housing types
- land for housing – infill and new release, dwelling yield and population estimates and supporting infrastructure
- 10 • Affordable housing contribution scheme analysis - steps 1 & 2 undertaken by Judith Stubbs and Associates providing a preliminary analysis to demonstrate basis for implementation of a scheme in Byron Shire.

***Summary and next steps***

- 15 The Residential Strategy (Attachment '6') is consistent with the relevant State policies and directions and the North Coast Regional Plan. It's findings and actions have sufficient merit to be supported for forwarding to the NSW Department of Planning, Industry and Environment for endorsement, together with the following documentation:
- 20 • copy of this report
  - final Residential Strategy for consideration and adoption (Attachment '6')
  - Residential Strategy Background Report containing a compilation of analysis that has informed the final Strategy (Attachment '7').
  - 25 • Submissions Review Report in relation outstanding key issues raises during the 2019 exhibition as not yet reported to Council and the additional sites as exhibited in August 2020 (Attachment '1') – will form part of the Background Report
  - copies of submissions from the August 2019 exhibition (Attachment '2': 2019 - Government agency submissions and Attachment '3': 2019 - Confidential community submissions)
  - 30 • copies of submissions from August 2020 additional lands exhibition (Attachment '4': 2020 - Government agency submissions and Attachment '5': 2020 - Confidential community submissions)

This forms the basis of report Recommendation 4.

**35 STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

| CSP Objective   | L2  | CSP Strategy  | L3    | DP Action  | L4      | OP Activity                              |
|---|-----|---|-------|--|---------|--|
| <b>Community Objective 4: We manage growth and change responsibly</b> | 4.2 | Support housing diversity in appropriate locations across the Shire | 4.2.1 | Establish planning mechanisms to support housing that meets the needs of our community | 4.2.1.4 | <b>Finalise the Residential Strategy</b> |

40



***Legal/Statutory/Policy Considerations***

The changes outlined in Tables 1 and 2 to enable finalisation of the Residential Lands Strategy are consistent with the relevant Commonwealth, State and Regional policy frameworks.

5

***Financial Considerations***

The cost of preparing the draft Residential Strategy has been met within Council's budget for this project. Additional funds may be required should Council decide to significantly expand the scope of this project.

10

***Consultation and Engagement***

Various agencies, land owners and the community as outlined in this report.

## Report No. 13.4 Council's role in Housing Delivery

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy

**File No:** I2021/306

### 5 Summary:

Since 2016, there have been many resolutions passed by the current Council that have highlighted the need to find a way to address housing availability and affordability in Byron Shire.

10 Staff are now approaching the pointy end of the work. A decision on the most appropriate "affordable" housing delivery model/s to manage the land we have and the land we will receive from others is now necessary.

15 This report recommends that investigation into three different delivery models be further progressed - Community Land Trust, Live-Work and Restricted Purchase models for application to Council owned land and developments.

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### RECOMMENDATION:

#### That Council:

- 20 1. Notes the staff report on Council's role in Housing.
2. Requests staff to further investigate the Community Land Trust, Live-Work and Restricted Purchase models to see how they can be applied to Council owned land and developments including contributions under a SEPP 70 Affordable Housing Contribution Scheme.
- 25 3. Receives a report by or before mid-year on the findings of 2 with recommendations on the appropriate next steps for application and implementation of the preferred model/s to Council land and developments.

#### Attachments:

- 30 1 Special Disclosure of Pecuniary Interest, E2012/2815 



## Report

Since 2016, there have been many resolutions passed by the current Council that have highlighted the need to find a way to address housing availability and affordability in Byron Shire.

- 5 The Byron Shire Key Workers Issues Paper on this agenda talks to the real and present housing crisis in Byron Shire the result of an inflated property market due to COVID, and provides some recommendations to address same.

- 10 However, as discussed in that report, due to the current state planning framework and the constraints in which local government operates in terms of finance and co-investment options for housing development and its associated infrastructure, progress remains slow on delivery of any of the Council initiated projects.

There is an urgent need for a policy circuit breaker to enable the supply of low- to high-end rental and ownership accommodation opportunities outside the current 'inflated free market' for displaced local community and key workers in regional areas like Byron Shire.

### 15 Housing Model Options

On the back of [Notice of Motion 9.4 Affordable Housing \(Resolution 16-292\)](#), Echelon Planning and Urban Xchange were commissioned to prepare a research paper on contemporary housing models being delivered nationally and overseas to understand applicability to Byron Shire.

- 20 This paper outlines the characteristics of each model, its benefits for the housing market, and the commercial governance structures that can be put in place to deliver local affordable sustainable housing in Byron Shire.

The full report is available on Council's web page link below. This report informed the development of the Byron Shire Residential Strategy.

- 25 [Echelon Planning Report Byron Shire Alternative Housing Models.pdf](#)

Council adopted the [Byron Shire Residential Strategy at 10 December 2020 Planning meeting](#). The Strategy has been forwarded to the NSW Department of Planning Industry and Environment (DPIE) for final endorsement. Extract:

- 30 ***DIRECTION 2.1: Enable opportunities for innovative new residential forms and models that give a sense of place, promote environmental stewardship and encourage social, economic and cultural diversity and equity.***

- 35 This direction refers to new residential forms and models that can be built on private land or government owned land (such as the old Mullumbimby Hospital site). These are a possible option for people who want more affordable higher quality homes with a strong sense of community, which is currently not met by the traditional model of speculative housing development.

### Where to next for Housing in Byron Shire?

Council has an adopted Residential Strategy and policy framework, has multiple housing initiatives progressing, but is yet to find a way to deliver secure affordable and sustainable housing for our community and key workers.

Other Council's in Australia and New Zealand appear to also be grappling with this problem. Recent news coverage:

[Tasmanian Housing Crisis](#)

[New Zealand Housing Crisis](#)

To this end, it is timely to undertake a further deep dive into the practicality and feasibility of some of the housing models in the Echelon Xchange Report, as they can be applied to Council owned land and developments like Lot 22 and the Old Mullumbimby Hospital site.

There are three models that come to mind as tangible and relevant. For all, Council has land and pilot projects progressing to which these models could apply.

- **Community Land Trust (CLT)**

The concept of a Community Land Trust is simple – it is a form of shared ownership of a property, where the land component of a residential property is owned by community based, not-for-profit legal entity and the actual building is owned (or leased long-term) by an individual household.

Interestingly, Council previously resolved to become a foundation member of the Byron Community Land Limited (BCLL) in 2018.

[Notice of Motion No 9.1 Byron Community Land Limited Foundation Membership](#)

The principal purpose for which the BCLL was established was “to acquire land to provide Charitable housing in perpetuity for people in need of charitable housing who live or work in the Shire”.

Notwithstanding the commitment of the Board to the principle purpose, the decision was taken by the Board to voluntarily deregister the company on 23 March 2020.

This mainly occurred around the lack of financial viability and organisational capacity of getting a pilot project off the ground given the need to acquire land for this purpose in the first instance.

- **Live – Work models**

The Live/Work Co Living model is a setup where a building's bedrooms are private, but nearly all other spaces and facilities are communal. In this arrangement, the building operates as modern “dorms for grown-ups”.

The Live/Work Co living model continues to move further away from long term commitment with the model evolving from signing a lease to being provided only with a “membership” to provide for a furnished bedroom and common areas. This model is attractive to a young, urban, professional, and mobile population.

Under the umbrella of a Live /Work model is an arrangement where your workspace is combined with your living quarters so you essentially work from home but with a dedicated section for your office. This model is attractive to kitchen-table start-ups and freelancers.

- **Restricted purchase**

Price-controlled dwellings can only be resold at a limited cost or can be made available to purchasers on defined incomes.

The idea is that Restricted Purchase housing is made available at a discount, usually because a council or state government provides land cheaply. Resale of dwellings in this situation is controlled so that the discount remains in perpetuity to future occupants.

### **Consistency with emerging planning regulations**

In accordance with [Report No 6.8 - State Environmental Planning Policy No 70 Affordable Housing \(Revised Schemes\) \(SEPP 70\) \(Resolution 19-152\)](#)

staff have progressed with a planning proposal for a Byron Shire State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes) (SEPP 70). As part of this work a delivery vehicle to accept and manage contributions (land and/or land and building dedications or a monetary) under the scheme needs to be established.

Furthermore, the NSW government’s is exploring housing models outside the traditional market driven response: the Explanations of Intended Effects for the SEPP Housing Diversity included built-to-rent-to-buy and co-living. The current Employment Zones review is considering the Live/work model.

To identify land tenure and management models appropriate to Byron Shire places Council in a strong position to capitalise on potential planning regulation changes.

### **Next steps**

- Staff to further investigate the Community Land Trust, Live Work and Restricted Purchase models to see how they can be applied to Council owned land and developments.

- This work to encompass options for a delivery vehicle to accept and manage contributions under a SEPP 70 Affordable housing contribution scheme.

- That a report be presented back to Council by or before mid-year on the findings with recommendations on the appropriate next steps for application and implementation of the preferred model/s.

## **Strategic Considerations**

### **Community Strategic Plan and Operational Plan**

| <b>CSP Objective</b>  | <b>L2</b> | <b>CSP Strategy</b>   | <b>L3</b> | <b>DP Action</b>   | <b>L4</b> | <b>OP Activity</b>   |
|---|-----------|---|-----------|--|-----------|--|
| <b>Community Objective 4: We manage growth and change responsibly</b> | 4.2       | Support housing diversity in appropriate locations across the Shire | 4.2.1     | Establish planning mechanisms to support housing that meets the needs of our community | 4.2.1.2   | Prepare a report on deliberative development models to facilitate the delivery of accessible housing |

### **Recent Resolutions**

- *Res 20-016:* 20 Feb 2020: progress Tiny House planning proposal - ongoing
- 5 • *Res 20-02:1* 20 Feb 2020: progress Short Term Holiday let planning proposal - ongoing
- *Res 20-365:* 13 August 2020: adopt Affordable Housing Contribution Policy - complete
- *Res19-152:* 11 April 2019: progress SEPP 70 Affordable Housing Contribution planning proposal - ongoing
- 10 • *Res20-06:* 27 Feb 2020: EOI Housing above Council car parks- commenced
- *Res 20-611:* 19 November 2020: progress planning proposal Lot 22 – ongoing
- *Res 20-686:* 10 Dec 2020: Adopted Residential Strategy – with the Department of Planning, Industry and Environment for review and endorsement.

### **Legal/Statutory/Policy Considerations**

- 15 Amendments to planning controls may be necessary.

### **Financial Considerations**

Current and proposed work funded within existing operations budget.

## **Consultation and Engagement**

The report is provided to Council and the community to aid understanding of the housing affordability challenges in the Byron Shire.

# **Report No. 13.18 PLANNING - Letter of Offer and Draft Voluntary Planning Agreement for Affordable Housing - 68 Rankin Drive, Bangalow**

5 **Directorate:** Sustainable Environment and Economy

**Report Author:** Alex Caras, Land Use Planning Coordinator

**File No:** I2021/1041

## **Summary:**

10 A Letter of Offer to enter into a Voluntary Planning Agreement (VPA) and draft VPA have been submitted to Council. This follows lodgement of a corresponding planning proposal in mid-May to rezone Lot 261 DP 1262316 and Lot 11 DP 807867 (known as 68 Rankin Drive Bangalow) to *R2 Low Density Residential*. The subject land is identified as Area 11 in the Byron Residential Strategy.

15 This report considers the letter of offer and draft VPA, as contained in Attachments 1 - 3, in the context of Council's Affordable Housing Contribution Policy and Procedure, Byron Residential Strategy and draft Affordable Housing Contribution Scheme. Importantly, the report seeks Council decision as to whether or not to proceed with the VPA in the absence of an Affordable Housing Contribution Scheme (AHCS) being in place.

### **NOTE TO COUNCILLORS:**

20 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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## **RECOMMENDATION:**

### **That Council:**





- 30 1. **advises the applicant that due to the complex interaction with the Residential Strategy and draft Affordable Housing Contribution Scheme (AHCS), and given the significant risks identified in this Report, it is considered premature to proceed with the draft Voluntary Planning Agreement (as contained in Attachment 2 E2021/90306) until a statutory AHCS is in place for Byron Shire.**
- 35 2. **does not accept any 'urban residential' planning proposals pertaining to a non-Council owned and or managed investigation area (as identified in the Residential Strategy), until a statutory AHCS is in place for Byron Shire, noting that the timeframe for this may be at least 6 months away.**

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

#### **Attachments:**

- 1 Confidential - Letter of Offer to enter into a Voluntary Planning Agreement - 68 Rankin Drive Bangalow\_23 June 2021, E2021/90301
- 5 2 DRAFT Voluntary Planning Agreement - 68 Rankin Drive Bangalow\_12 July 2021, E2021/90306 
- 3 Proposed Residential Layout Plan\_68 Rankin Drive Bangalow\_June 2021, E2021/90298 
- 4 Letter from Department of Planning, Industry and Environment Planning Proposal PP-2021-3965 : Affordable Housing Contribution Scheme - Adequacy Assessment decision, E2021/90169 
- 10 5 Special Disclosure of Pecuniary Interest Form, E2012/2815 

## **Background**

Council resolved in 2018 (**Res 18-410; 18-543**) to commence an early implementation program to accelerate delivery of affordable housing, ahead of completing the Byron Residential Strategy (the Strategy). Among the sites considered at the time was 68 Rankin Drive, Bangalow, which was already identified as an investigation area in the draft Strategy.

The Strategy was adopted in December 2020 and is currently undergoing an independent review with the Department of Planning, Industry & Environment (DPIE). The above land is identified as Area 11 in the Strategy. Since adoption, the landowner and their consultant have met with staff on several occasions to discuss the use of a voluntary planning agreement (VPA) to accelerate the delivery of affordable housing on the subject land as part of a future planning proposal.

As a result of these discussions a Letter of Offer to enter into a VPA and draft VPA have been submitted to Council. This follows lodgement of a corresponding planning proposal in mid-May to rezone Lot 261 DP 1262316 and Lot 11 DP 807867 (known as 68 Rankin Drive Bangalow) to *R2 Low Density Residential*.

This report focuses on the letter of offer and draft VPA, as contained in Attachments 1 and 2 respectively, and seeks a Council decision as to whether or not to proceed with the Agreement in the absence of an Affordable Housing Contribution Scheme (AHCS) being in place.

## **Report**

Council received a Letter of Offer to enter into a VPA together with a draft VPA on 25 June 2021. Relevant particulars of the draft VPA are as follows:

- Proposes to dedicate eight (8) lots out of a fourteen (14) lot Affordable Housing Community Title Scheme (see Attachment 3);
- Affordable housing contribution to Council equates to approximately 20% of developable (community title) land to be rezoned to *R2 Low Density Residential*;
- Developer Contributions and Water and Sewer Headworks will also apply to the eight (8) lots to be transferred to Council;
- Clause 10 – provides that the VPA is complete when Council is granted the titles to the eight (8) lots to be transferred into Council ownership;
- Clause 12 – the Planning Agreement may be enforced by either party in the Court and that either party may bring proceedings in the Land and Environment Court to enforce any aspect of the Agreement;
- Clause 16 – provides that the applicant will pay up to \$5,000 towards the cost of preparing or amending the Agreement and Council is at liberty to suggest alterations to the Agreement in accordance with this clause.



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### Relationship to Affordable Housing Contribution Policy & Procedure

Council's Affordable Housing Contributions [Policy](#) and [Procedure](#) were adopted on 13 August 2020.

5 The Policy provides an overarching framework to facilitate, provide and manage affordable housing contributions in our Shire. Importantly it provides a mechanism to secure land and or monetary contributions to deliver affordable housing on certain land identified in the Residential Strategy. Although the Policy is not legally binding, it is intended that the Council and all persons dealing with Council in relation to affordable housing contributions will follow this policy to the fullest extent possible.

10 Section 4.10 of the Policy supports engaging with developers on Planning Agreements for the provision of affordable housing however, acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council.

15 The supporting 'Procedure' is intended to assist with implementation of the Policy and detail how Council intends to operate the contribution framework in Byron Shire. The information contained in the Procedure is considered most relevant to Council's assessment of the draft VPA.

This assessment is provided in Table 1 below.

**Table 1 – Assessment of draft VPA against Council's Procedure**

| <b><u>Affordable Housing Contribution Procedure 2020</u></b>   |   |                                |
|--|---|--------------------------------|
| <b><i>Applicable Section in Procedure</i></b>  | <b><i>Draft VPA</i></b>   | <b><i>Consistent (Y/N)</i></b> |
| <p><b>Diagram 1: Contribution setting:</b> provides a visual overview of the steps required to enable submission of a planning proposal for Gateway determination.</p> <ul style="list-style-type: none"> <li>States that “even if the proponent offers to enter into a VPA, Council will seek to apply an Affordable Housing Contribution Scheme (AHCS) clause for the subject land in LEP 2014” (ie. both AHCS and VPA will be applied ‘in parallel’ as part of a planning proposal).</li> </ul> | <p>Council does not have an Affordable Housing Contribution Scheme (AHCS) in place, as this is caught up in the independent review of the adopted Residential Strategy by the Department of Planning, Industry &amp; Environment (DPIE).</p> <p><b>Note:</b> Although the absence/presence of an AHCS for Byron LGA is outside the scope of a draft VPA, it is the most relevant issue to Council’s consideration of this VPA. This is further discussed below.</p> | N/A                            |
| <p><b>2. Affordable Housing Contribution Rates:</b> “Bangalow greenfield housing contribution areas: <b>20%</b> of the additional lots or developable area whichever the greater that is to be used for residential uses.”</p>   | <p>Proposes to dedicate eight (8) lots out of a fourteen (14) lot Community Title Scheme, which equates to approximately 20% of developable land to be rezoned to <i>R2 Low Density Residential</i>. (see Attachment 3).</p> <p>However the 8 lots are all grouped together and best practice is to have them</p>   | <p>Yes</p> <p>No</p>           |

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.18

| <a href="#"><u>Affordable Housing Contribution Procedure 2020</u></a>  |   |                         |
|--|---|-------------------------|
| <b>Applicable Section in Procedure</b>   | <b>Draft VPA</b>  | <b>Consistent (Y/N)</b> |
|  | dispersed throughout the development, consistent with the <a href="#"><u>Residential Strategy</u></a> 'affordable housing criteria' (Appendix D).   |                         |
| <b>4.4.2.1</b> The contribution rate may be fulfilled using:<br>a) a percentage of dedicated floor space<br>b) land (may be part of the said land, or other land of the applicant)<br>c) monetary contribution or<br>d) combination of the above.  | Proposes contribution in the form dedicating fully serviced land (8 lots) within a 'small lot' Community Title Scheme.  | Yes                     |
| <b>5.18.1:</b> "... if the Planning Agreement relates to an application by a developer for an instrument change, <b><i>the developer will pay the whole of Council's costs.</i></b> "  | Provides that the applicant will pay up to \$5,000 towards the cost of preparing or amending the Agreement  | No                      |
| <b>5.1.5:</b> "Any letter of offer for a Planning Agreement with Council is to be made by the proponent <b><u>before lodging a planning proposal application.</u></b> "  | The applicant lodged a planning proposal (on the Planning Portal) in mid-May, prior to Council being able to consider the Letter of Offer and draft VPA in this report.<br><br>Acceptance of the planning proposal from the portal is pending the outcome of this report. Hence the purpose of this report. | No                      |
| <b>5.1.7</b> Council will endeavour to consider the offer within 40 days of receipt and advise of the proponent of the in-principle determination to enable the proponent to progress with the lodgement of the planning proposal. This in principle determination will provide the basis for the agreement negotiation. Council may decide to delegate this advisory determination process in the interest of efficiency. | The applicant has lodged both Letter of Offer and draft VPA for Council's consideration. These documents are being reported to Council for a decision within the 40 day period from receipt.<br><br>Refer also to comments in 5.1.5 above.  | N/A                     |

**Affordable Housing Contribution Procedure 2020**

| <b><i>Applicable Section in Procedure</i></b>   | <b><i>Draft VPA</i></b>  | <b><i>Consistent (Y/N)</i></b> |
|---|--|--------------------------------|
| <b>5.3 Form of Contribution:</b> <ul style="list-style-type: none"> <li>“A contribution for affordable housing will only be accepted in the form of a land dedication free of cost. The dedicated land has to be part of the development application land. A land contribution to Council for the purpose of affordable housing requires the land is fit for purpose.”</li> <li>“ .. Planning Agreements must be in addition to s7.11 or s7.12 of the Act contributions.</li> </ul> | <p>Proposes contribution in the form dedicating fully serviced land (8 lots) as part of a ‘small lot’ Community Title Scheme.</p> <p>Section 7.11 Developer Contributions and Water and Sewer Headworks charges will still apply to the eight (8) lots to be dedicated to Council.</p> | <p>Yes</p> <p>Yes</p>          |
| <b>5.4 Acceptability test to be applied to Planning Agreements</b> (pp 9-10 list 12 questions to be considered for a Letter of Offer and negotiated planning agreement)   | Meets all relevant acceptability questions.  | Yes                            |
| <b>5.5 When will Council not consider entering a Planning Agreement</b> (pp 10-11 identify the specific circumstances where Council will not consider entering a Planning Agreement)  | None of the 11 circumstances identified in 5.5 apply to the draft VPA.   | Yes                            |

**Relationship to Residential Strategy**

5 The Strategy was adopted in December 2020 and is currently undergoing an independent review with the Department of Planning, Industry & Environment (DPIE). The review is aimed at resolving a number of outstanding issues, including the relationship with the Strategy and Council’s draft Affordable Housing Contribution Scheme (recently submitted) along with how to best ensure their integration when assessing future planning proposals. This review has only just commenced is still some months away from completion.

10 To date the DPIE have not raised any issues about the subject land, which is identified as Area 11 in the Strategy.

**Relationship to draft Affordable Housing Contribution Scheme**

Council currently does not have an Affordable Housing Contribution Scheme (AHCS) in place in LEP 2014. Although a draft AHCS planning proposal was lodged in June with DPIE (in accordance with **Res 19-152**), this was returned to Council on the grounds that it

was “premature and dependent on further studies and reviews being completed”. (Attachment 4). This includes DPIE’s review of the Residential Strategy which is still months away from completion.

- 5 The subject land was among those identified in the draft AHCS maps along with a 20% contribution rate (ie. of developable residential lots) to be applied.

### Internal legal advice

A copy of the draft VPA was circulated to internal legal staff for comment. The feedback identified a number of issues requiring further attention and/or clarification, with the most relevant being:

- 10
- Definition of certain terms used
  - Triggers and timing for dedication for the purposes of affordable housing
  - Implications of accepting land in a community title scheme
  - Enforcement of Agreement
  - Developers’ mortgage over the subject land
- 15
- VPA costs to be borne by the Developer/Landowner

The above issues are not considered absolute constraints to Council accepting the applicants Letter of Offer and draft VPA; rather they represent matters that need to be addressed to Council’s satisfaction prior to accepting a corresponding planning proposal for the subject land.

### 20 Main Issue: Council’s ability to ensure dedication of land for affordable housing

- Should Council choose to proceed with the attached VPA ahead of an AHCS being in place, there is no guarantee that 20% of the rezoned land (or any %) will be dedicated for affordable housing purposes. This is because a planning agreement is only ‘voluntary’ and the applicant can choose to withdraw from the VPA anytime before the rezoning
- 25 process is finalised, leaving Council without a fall-back mechanism (ie. AHCS) to ensure dedication of any part of the land for affordable housing purposes. To address this risk the contribution framework in the “[Affordable Housing Contribution Procedure 2020](#)” is based on applying both an AHCS and VPA ‘in parallel’ as part of any residential planning proposal received. This is currently not possible given (i) the draft AHCS is caught up in
- 30 DPIE’s review of the adopted Residential Strategy and (ii) DPIE’ approval of Council’s Residential Strategy and AHCS must occur together.

- A decision to proceed with this VPA ahead of an AHCS being in place also risks creating a precedent for other applicants to lodge residential planning proposals, again with no fall-back mechanism to ensure that any part of the land will be dedicated for affordable
- 35 housing purposes (i.e.. should the applicant withdraw the VPA before the rezoning process is finalised).

It is acknowledged that Council has repeatedly expressed a strong commitment to delivering affordable housing outcomes within its current term, a commitment which is equally shared by staff. However, the abovementioned risks are very real and need to be

fully appreciated in deciding whether or not to proceed with this VPA ahead of an AHCS being in place.

## **Options going forward**

Having regard to the information presented above, Council's options are as follows:

- 5      1. Do not proceed with the attached VPA nor accept any residential zone planning proposals for non-Council owned or managed land until a statutory AHCS is in place for Byron Shire, noting that this may be at least 6 months away.

10      This option is in recognition of the complex interaction with the Residential Strategy and draft Affordable Housing Contribution Scheme, together with the significant risks identified in this report, if Council were to proceed with the attached VPA ahead of an AHCS being in place.

- 15      2. Proceed with the attached VPA ahead of an AHCS being in place, subject to further amendments to address the inconsistencies in Table 1 and legal matters identified above, as a basis for accepting a planning proposal. Once the draft VPA has been amended to Council's satisfaction, commence assessment of the applicant's planning proposal (lodged in mid-May) and report the outcomes to Council for Gateway decision.

20      This option is a departure from the process set out in the Affordable Housing Contribution Policy and Procedure and accepts that there is a real risk of undermining Council's ability to ensure dedication of land for affordable housing — with this and future residential planning proposals.

## **Strategic Considerations**

### **Community Strategic Plan and Operational Plan**

| <b>CSP Objective</b>                    | <b>L2</b> | <b>CSP Strategy</b>   | <b>L3</b> | <b>DP Action</b>   | <b>L4</b> | <b>OP Activity</b>   |
|---|-----------|---|-----------|--|-----------|--|
| We manage growth and change responsibly | 4.2       | Support housing diversity in appropriate locations across the Shire | 4.2.1     | Establish planning mechanisms to support housing that meets the needs of our community | 4.2.1.3   | Prepare an Affordable Housing contribution scheme under SEPP 70 to be incorporated in the local planning framework controls (Action in Residential Strategy) |

**Recent Resolutions**

- Res 19-152 (11 April 2019 Planning Meeting)
- Res 20-686 (10 December 2020 Planning Meeting)

**Legal/Statutory/Policy Considerations**

- 5 The Letter of Offer and draft Voluntary Planning Agreement have been considered in the context of the Environmental Planning and Assessment Act and supporting regulations, as well as Council's Affordable Housing Contribution Policy & Procedure and Byron Residential Strategy.

**Financial Considerations**

- 10 Should Council choose to proceed with the attached VPA ahead of an AHCS being in place, all work associated with the VPA and corresponding planning proposal must be funded by the applicant.